# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1957**

**No. 95**

HOOVER MOTOR EXPRESS CO., INC., PETITIONER,

*vs.*

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

**PETITION FOR CERTIORARI FILED MARCH 27, 1957**
**CERTIORARI GRANTED JUNE 17, 1957**

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1957

# No. 95

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HOOVER MOTOR EXPRESS CO., INC., PETITIONER,

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## INDEX



RECORD PRESS, PRINTERS, NEW YORK, N. Y., SEPTEMBER 10, 1957

# APPENDIX TO APPELLANT'S BRIEF

[fol. 1] In United States District Court For the Middle District of Tennessee, Nashville Division

Civil No. 2013

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Hoover Motor Express Company, Inc., Plaintiff,

v.

United States of America, Defendant.

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Basis of Action: Sec. 23(a)(1)(A), Internal Revenue Code; Seeking recovery by collecting alleged disallowance in sum of $28,357.02, interest and costs, paid by plaintiff to Defendant for fines imposed for years 1951, 1952 and 1953.

*For Plaintiff:*

Judson Harwood, 515 Nashville Trust Bldg., Nashville 3, Tennessee.

*For Defendant:*

Fred Elledge, Jr., U. S. Attorney, 879 U. S. Court house, Nashville 3, Tennessee.

R. B. Ross, Trial Section—Tax Division, U. S. Department of Justice, Washington, D. C.

Docket Entries

1955

Apr. 13—Complaint filed, with five copies.

Apr. 14—Summons returned executed in full and filed. MFE $.....

Apr. 20—Registry U.S. Mail Receipt Card, returned and filed showing service upon the Attorney General, and that he has his copies.

[fol. 2]

June 13—Answer filed by Defendant, two attested copies delivered to the U.S. Attorney and one copy mailed to Plaintiff's Attorney Judson Harwood.

1955

Oct. 11—Memorandum-Opinion entered finding that Plaintiff was entitled to deduct the fines as deductions from gross income for particular years involved, and that such would not frustrate any clearly defined policy of the State Statute. Judgment will be entered in accordance with said Memorandum-Opinion; and either party may submit suggestions for additional findings of fact and conclusions of law. Attested copy delivered to the U.S. Attorney, one copy mailed to plaintiff's attorney Judson Harwood, and one attested copy mailed to the Attorney General.

1956

Feb. 2—Judgment entered in favor of plaintiff over Defendant. Copy mailed to Judson Harwood and three attested copies delivered to the U.S. Attorney.

Feb. 2—Notice of Appeal filed by Plaintiff.

Feb. 28—Appeal Bond Filed.

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[fol. 3] IN UNITED STATES DISTRICT COURT

COMPLAINT—Filed April 13, 1955

MAY IT PLEASE THE COURT:

I.

The plaintiff is a Tennessee Corporation with principal offices in Nashville, Davidson County, Tennessee and is engaged in business as a common carrier of freight by motor vehicle.

II.

This is a suit for the recovery of corporate income taxes erroneously assessed against and collected from the plaintiff for the calendar years 1951, 1952 and 1953.

III.

This Court is given jurisdiction of this cause of action by Section 1346, Title 28, U.S.C.A.

IV.

A representative of the Bureau of Internal Revenue, in auditing the income tax returns of plaintiff for the calendar years 1951, 1952 and 1953, made several adjustments but the adjustments herein complained of involve a disallowance, as an ordinary business expense, of fines paid by the plaintiff, which fines were imposed by various states through which plaintiff operates. The fines involved were imposed against plaintiff because plaintiff's vehicles, in some way, were in violation of the weight limitation laws of the various states. Many of these fines involved vehicles which were well within the gross weight limitation imposed by the various states, but at the time said vehicles reached a weighing station, one or more axles of said vehicles were carrying weight in excess of the per axle limitation imposed by the various states. This situation usually resulted from the shifting of the freight within the vehicle after said vehicle was loaded, said shifting resulting usually from the braking actions or starts involved in [fol. 4] operating said vehicles. In these instances the total freight on plaintiff's vehicle did not exceed the permissible freight that said vehicle could lawfully haul, but due to its actual location within the vehicle, an excessive portion of the weight was imposed upon one particular axle. This type of violation was responsible for a vast majority of all such fines.

V.

The remaining fines involved were imposed because the entire vehicle of plaintiff, together with the load on said vehicle, was in excess of the maximum total weight permitted by the particular state involved.

VI.

Plaintiff, by virtue of its Certificates of Public Convenience and Necessity issued to it by the Interstate Commerce Commission, is obligated to and does serve many small communities, cross-road settlements and business concerns located on the open highways, and as a result

thereof, regularly picks up freight from shippers located at such places. In determining the weight of shipments so picked up, the plaintiff, by necessity, relies upon the weight as shown on the bill of lading which is prepared by the shipper and the trucks are loaded with reference to the weight of the various shipments and when the shipments arrive at a major terminal point, the shipments are actually weighed and any correction in the weight of any shipment is made at that time. This practice of plaintiff is the accepted practice among motor carriers generally. The weight of such shipments is frequently in excess of the weight as reflected by the bill of lading which was prepared by the shipper and the loading of the trucks occasionally results in the vehicle actually carrying more weight than the plaintiff knew was on the vehicle. When trucks are loaded in reliance upon the weight of the shipments as represented by the shipper and the represented weights are erroneous, the truck will naturally be overweight until it arrives at a major terminal. In the meanwhile, if it has passed a weigh-[fol. 5] ing station, the violation has been noted and a fine imposed.

The plaintiff, of course, knows the gross weight of its empty vehicles and can compute the maximum permissible pay load that the vehicles can carry and plaintiff did not at the time here involved, and does not now, knowingly permit any vehicles to operate over the highways with a load in excess of the permissible load as reflected by the statutes of the states through which the vehicles must pass. It is true, however, that on occasions a vehicle will exceed the gross maximum permissible weight, but plaintiff avers that this not only is not wilful but cannot be avoided even by the exercise of ordinary precautions. Plaintiff as well as all motor carriers naturally endeavor to load their trucks as near to the maximum permissible pay loads as possible in order to produce the greatest revenue, and if plaintiff should change or alter this general practice so as to avoid any possibility of an occasional overweight vehicle, it could not operate profitably and, of course, the defendant would collect no tax from plaintiff.

Plaintiff further avers that it operates in the states of Georgia, Alabama, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois and Missouri and the maximum permissible weight limit in these various states varies. The most restrictive state in which plaintiff operates is Kentucky, the legal permissible pay load which plaintiff can transport into or through Kentucky being approximately 8,000 to 14,000 lbs. less than is permissible in the other states involved. Since plaintiff's major operation is a north-south operation from Cincinnati, Louisville and St. Louis across the state of Kentucky, unless plaintiff endeavors to load its equipment to the maximum permissible weight according to the laws of Kentucky, it will be impossible for plaintiff to operate successfully.

Plaintiff, therefore, denies that any of the fines involved were the result of wilful violation of the laws of any state [fol. 6] or were the result of its failure to exercise ordinary precaution and that the payment thereof is an ordinary and necessary expense of doing business as a common carrier by motor vehicle.

VII.

Plaintiff further avers that on September 10, 1942, at which time Mr. Guy Helbering was the Commissioner of Internal Revenue, he, as such Commissioner, promulgated a regulation to the effect that overweight fines imposed on truck operators were ordinary and necessary business expense and were deductible as such from gross income for purposes of computing income taxes. This regulation and interpretation remained in full force and effect until November 30, 1950, at which time a new ruling by the Commissioner of Internal Revenue was issued reversing its earlier holding and provided that from and after December 1, 1950, overweight fines paid by trucking companies, such as plaintiff, would no longer be deductible as a business expense. This later ruling reversing the earlier ruling was made by Mr. George J. Schoeneman who was Commissioner of Internal Revenue at that time. From September 10, 1942 to the date of the new regulation there was no change whatever in the language of the applicable statute, which is Section

23 (a)(1)(A) of the Internal Revenue Code and reads as follows:

> "In computing net income there shall be allowed as deductions:
>
> In general. All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. . . ."

The foregoing Section of the Act, in the identical language, was in full force and effect during all three of the years involved in this suit.

Plaintiff, therefore, avers that the original ruling of the Commissioner of Internal Revenue was correct and the fact that Congress did not see fit to change the language of the [fol. 7] Act for a period of more than eight years after the original interpretation was made signifies Congressional approval of said original interpretation, and that the Commissioner of Internal Revenue, by reversing its earlier ruling, has, in effect, endeavored to rewrite the statute, which, of course, he has no right to do.

While the amount of fines paid involved a very substantial sum of money, the plaintiff operates several hundred tractor-trailer trucks, practically all of which are on the highways six days per week throughout the year. The gross receipts of plaintiff from its common carrier operations during each of the three years involved approximated Six Million Dollars.

## VIII.

Plaintiff avers that as a result of the disallowance of overweight fines for the three years involved it was required to and did pay additional income tax and excess profit tax, together with interest, as follows:

| | |
|---|---|
| 1951 | $12,252.35 |
| 1952 | 9,264.69 |
| 1953 | 6,839.98 |
| Total | $28,357.02 |

These payments were made on the 29th of October, 1954.

Plaintiff duly filed its claim for refund of the above sums, as required by the statute as a condition precedent to filing this suit, and said claim for refund has now been duly rejected and denied.

Plaintiff therefore sues the defendant for the sum of Twenty-eight Thousand Three Hundred Fifty-seven and 02/100 ($28,357.02) Dollars, plus interest from October 29, 1954.

.....
Attorney for Plaintiff.

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[fol. 8] In United States District Court

Answer—Filed June 13, 1955

The defendant, The United States of America, by and through its attorney, Fred Elledge, Jr., United States Attorney for the Middle District of Tennessee, answers plaintiff's complaint as follows:

1.

Admits the allegations contained in paragraph I.

2.

Denies the allegations contained in paragraph II, except admits that this is a suit for refund of 1951, 1952 and 1953 corporate income taxes.

3.

Denies the allegations contained in paragraph III, except admits that this Court's jurisdiction herein is delimited by Section 1346, Title 28, U. S. C.

4.

Denies the allegations contained in paragraph IV, except admits that a Revenue Agent made several adjustments in plaintiff's income tax returns for the taxable years 1951, 1952 and 1953, and that the adjustments complained of herein involve the disallowance, as an ordinary and necessary business expense, of fines paid by plaintiff.

5.

Denies the allegations contained in paragraph V, except admits that this action concerns the deduction from gross income of fines paid by plaintiff for violation of various State laws regulating weight loads of trucking concerns.

6.

Alleges that, at the present time, defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VI, except that defendant denies that payment of the fines re- [fol. 9] ferred to were an ordinary and necessary expense of doing business within the meaning of the Internal Revenue laws.

7.

Denies the allegations contained in paragraph VII, except admits that on September 10, 1942 the Commissioner of Internal Revenue issued a Special Ruling (see 505, C.C.H., par 6134) pertaining to the deductibility of fines paid by truckers for violation of state weight limitation laws, and that on November 30, 1950 the Commissioner of Internal Revenue revoked said ruling by I.T. 4042 (1951-1 Cum. Bull. 15). It is also admitted that Section 23(a)(1)(A) of the Internal Revenue Code of 1939 was the same in its application throughout the period September 10, 1942 through November 30, 1950, and that for the years 1950 through 1952 Section 23(a)(1)(A) of the Internal Revenue Code of 1939 provided for the deduction of ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

8.

Denies the allegations contained in paragraph VIII and also alleges that at the present time defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VIII with respect to the amount of additional tax paid, which was attributable to the disallowance of the deduction of the

fines levied against plaintiff, since plaintiff's additional payment covers other adjustments also and there has been no apportionment of the amount of the tax attributable to the deduction of the fines. Said additional assessments were satisfied on November 1, 1954 by the payment of $2,556.04 for the year 1951, $7,675.03 for the year 1952, and $77,056.86 for the year 1953, and that plaintiff filed claims for refund on November 22, 1954 for these years and that said claims for refund have not been rejected by the required statutory notice.

[fol. 10] WHEREFORE, defendant, having fully answered plaintiff's complaint, prays that plaintiff take nothing in this suit; that plaintiff's complaint be dismissed; and that defendant be allowed its costs herein.

Fred Elledge, Jr., United States Attorney, Attorney for Defendant.

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IN UNITED STATES DISTRICT COURT

MEMORANDUM OPINION—Entered October 11, 1955

The principal issue for decision is whether fines paid by a truck operator for violations of state laws prescribing maximum weight limitations are deductible from gross income as ordinary and necessary business expenses under Section 23 (a) (1) (A) of the Internal Revenue Code which provides as follows:

> "In computing net income there shall be allowed as deductions . . . all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . ."

The Commissioner of Internal Revenue, on September 10, 1942, issued a special ruling that such fines were deductible. That ruling remained in effect until it was re-[fol. 11] scinded by a new ruling of the Commissioner issued November 30, 1950. The reasons for revocation of the earlier ruling are set forth in the regulation of November 30, 1950, as follows:

"Reconsideration has been given to the conclusion heretofore reached by the Bureau that fines paid by truck operators for violations of State laws prescribing maximum weights, loads, and sizes of vehicles are deductible from gross income as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code.

"That conclusion was based upon the understanding that the fines in question were paid in lieu of fees which would have been payable for permits to operate overloaded or overlength vehicles, and that such permits were generally granted by State highway authorities. The fines were, therefore, regarded as more in the nature of tolls than penalties.

"Upon reconsideration of the question involved it appears that the premise on which the Bureau's conclusion was based was erroneous. It is therefore held that fines paid by truck operators for violations of State laws prescribing maximum weights, loads, and sizes of vehicles are penalties which are not deductible as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code. (See Burroughs Building Material Co. v. Commissioner, 47 Fed. (2d) 178, Ct. D. 297, C. B. X-1, 397 (1931), and G. C. M. 11358, C. B. XII-1, 29 (1933).)"

Plaintiff is a common carrier of freight by motor vehicle operating in the states of Georgia, Alabama, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, and Missouri, all of which have truck weight limitation laws which are similar in general character although they vary with respect to details and with respect to the maximum weight limita- [fol. 12] tions imposed. For the years 1951 through 1953, plaintiff paid various fines imposed upon it because of its violations of such laws, and in its income tax returns for those years, deducted the amounts of the fines from gross income as ordinary and necessary business expenses under the provisions of Section 23(a)(1)(A) of the Internal Revenue Code. Its returns for those years, having been audited and the deductions disallowed by the Commissioner consistently with his ruling of November 30, 1950, the plaintiff

paid the resulting additional income and excess profits taxes for the years involved and instituted the present action for their recovery.

The theory of the plaintiff is that the weight laws of the states in which it operates are so restrictive in character and have such variations in permissible weight limitations that it is practically impossible to operate the plaintiff's motor carrier business without incurring the penalties imposed, notwithstanding good faith efforts upon its part to comply with the weight regulations. It is insisted that the plaintiff has carried the burden of proof to show that its violation of the weight laws were neither wilful nor negligent and that the fines were incurred despite all reasonable efforts and precautions on its part to comply. On the basis of this reasoning, it is insisted that the question is controlled by such cases as Jerry Rossman Corporation v. Commissioner, (2 Cir.) 175 F. 2d 711; National Brass Works v. Commissioner, 9 Cir., 182 F. 2d 526; and Commissioner v. Pacific Mills, 1 Cir., 207 F. 2d 177, in which it was ruled that overcharges under the Emergency Price Control Act of 1942 which were neither wilful nor the result of failure to take practicable precautions were deductible as ordinary and necessary business expenses within the meaning of the Internal Revenue Code.

The defendant denies that the plaintiff has carried the burden of showing that its violations were neither wilful nor the result of failure to exercise due care or to take [fol. 13] proper precautions, and insists, in any event, that the exactions under the weight limitation laws which the plaintiff was required to pay, constituted "penalties", or were punitive in nature, and that to allow them as deductions would frustrate the clearly defined policy of state laws within the doctrine of Great Northern Ry. Co. v. Commissioner, 8 Cir., 40 F. 2d 372, Chicago R. I. & P. Ry. Co. v. Commissioner, 7 Cir., 47 F. 2d 990, Burroughs Bldg. Material Co. v. Commissioner, 2 Cir., 47 F. 2d 178, Commissioner v. Longhorn Portland Cement Co., 5 Cir., 148 F. 2d 276, and other decisions of like import.

It appears that the fines paid by the plaintiff for the taxable years resulted in large measure, probably in the vast majority of instances, because one or more axles of the vehicle involved carried weight in excess of the per axle

limitation imposed by the various states, although in these instances the vehicle with its load of freight was within the overall weight limitations. The proof shows that such violations usually occurred because of a shifting of the freight within the vehicle during transit.

In other instances, the proof suggests that violations occurred when the plaintiff picked up freight in small communities or from business concerns located on the open highways and loaded its vehicles in reliance upon the weight of the load as shown on the bill of lading which was prepared by the shipper, there being no opportunity to weigh the shipments until they arrived at a major terminal point. In still other cases, the violations resulted when it became necessary for the plaintiff to substitute a tractor of heavier weight after a breakdown enroute because a tractor of similar weight was not at that time available. The plaintiff also introduced evidence to the effect that other freight haulers regularly pay fines under the weight limitation laws, and it is argued from the entire record that the situation is such that the plaintiff's business can not be operated on a practical basis without necessarily incurring the fines and penalties imposed by the law.

[fol. 14] On the other hand, it is argued for the defendant that many other transportation companies are able to operate within the weight limitations, and it is insisted that by reasonable efforts the plaintiff would find no difficulty in avoiding violations, for example, by improving its methods of loading and packing the freight within the vehicle to avoid shifting in transit, by closer supervision of its operations, and by more careful inspection and adjustment of its weighing facilities.

In the view which the Court takes of the case, it is not necessary to determine whether the plaintiff did all which should reasonably be required of it as a prudent operator to comply with the weight limitations involved. Assuming that it took every precaution that could fairly be demanded consistent with a practical operation of its business, and assuming further that it did not act with wilful intent, the Court is of the opinion that to allow the claimed deductions from gross income for the taxable years would nevertheless

frustrate the clearly defined policies of the applicable state weight limitation laws.

There can be no doubt that the underlying policy of the laws under which the fines were paid is not only to protect the highways of the state but also to protect the persons using them. Violations of the statutes are punishable by the imposition of a fine which is penal in character. No distinction is made in the statutes between an innocent or non-negligent violation, on the one hand, and one which is either wilful or due to a negligent failure to take adequate precautions, on the other hand. It was evidently considered that the purposes of the statutes could be accomplished more effectively by treating all violators alike. This thought is borne out by the provisions commonly found in statutes of this character that the Commissioner of Highways, or other proper authority, shall have discretionary power to grant special permits for freight movements in excess of the prescribed weight limitations, the inference [fol. 15] being that, in the absence of such special permit, neither hardship nor good faith shall constitute a defense to a violation.

There are a number of cases holding that statutory penalties are not deductible from gross income as ordinary business expenses. The reason for this doctrine was succinctly stated in Commissioner of Internal Revenue v. Longhorn Portland Cement Co., 5 Cir., 148 F. 2d 276, 277, in which deductibility was denied of sums paid by the taxpayer in satisfaction of statutory penalties incurred for violations of state antitrust laws:

> " * * * that the penalty is a punishment inflicted by the state upon those who commit acts violative of the fixed public policy of the sovereign, wherefore to permit the violator to gain a tax advantage through deducting the amount of the penalty as a business expense, and thus to mitigate the degree of his punishment, would frustrate the purpose and effectiveness of that public policy."

Upon like reasoning deductions have been denied for fines and costs paid for violations of state laws relating to price

fixing, Burroughs Bldg. Material Co. v. Commissioner, supra; and for sums paid by railroads for violations of the federal safety appliance laws. Chicago R. I. & P. Ry. Co. v. Commissioner, supra; and Great Northern Ry. Co. v. Commissioner, supra.

But the soundness of the rule which would deny deductibility to all statutory penalties, or which would make the punitive character of the exaction an inflexible criterion, has been seriously questioned in later cases, particularly the case of Jerry Rossman Corp. v. Commissioner, supra. In that case Judge Hand pointed out that "there are 'penalties' and 'penalties' ", and ruled that the real test in the case of a penalty, as in the case of any other exaction, is whether its allowance as a deduction would frustrate the sharply defined policy of the statute, the question being decided in [fol. 16] every case ad hoc. Applying this rule, the court found, as other courts have done in similar cases, that the allowance as a deduction of an innocent and non-negligent overcharge under the Emergency Price Control Act of 1942 did not frustrate the policy of that particular Act.

It is significant to note that Judge Hand held in the Rossman case that the overcharge under the Emergency Price Control Act was not a penalty, although he went further and ruled hypothetically that if it should be regarded as penal in nature, its allowance as a deduction did not frustrate the policy of the Act. It is clear from the opinion in the case that this result was reached because the court found that the Administrator, in applying the Act, had adopted the policy of making a distinction between innocent violators and those who had violated the Act because of wilfulness or a failure to take practicable precautions. Accordingly, the court found that where the Administrator had accepted the overcharge as sufficient without requiring the payment of treble damages, such acceptance was evidence of the fact that he regarded the overcharge as having been made innocently, with the result that no policy of the Act was frustrated.

The policy which had been pursued by the Administrator was incorporated into the Act itself by the 1944 amendment of Section 205 (e), and the other OPA cases, subsequent to the Rossman case, were decided on the basis of the amend-

ment. Thus, in the case of Commissioner v. Pacific Mills, supra, the question before the court was whether a payment to the Office of Price Administration in settlement of claims for overcharges was deductible as an ordinary and necessary business expense under Section 23 (a)(1)(A) of the Internal Revenue Code. In holding that the overcharge was deductible, the court found that its allowance as a deduction would not frustrate the Act. The reasoning of the court is clearly indicated by the following excerpt from its opinion: [207 F. 2d 177, 182]:

> [fol. 17] "It is clearly evident from the wording of the amended statute itself, as well as from the legislative history of the amendatory act, that the fundamental policy of the act as amended was to draw a sharp line of distinction between innocent violators on the one hand, and those who had either violated the act wilfully, or else had failed to take practicable precautions to comply, on the other. To this end violators were subjected by Sec. 205(e) of the amended act to payment of no more than their overcharges for the preceding year, or $25, whichever was greater, when they were able to prove that their violation was neither wilful nor the result of their failure to take practicable precautions against the occurrence of their violation. But violators who could not prove both their lack of wilfulness and that they had taken practicable precautions to comply were subjected in the court's discretion to the payment of up to three times the amount of their overcharges for the preceding year or else to not less than $25 nor more than $50, whichever sum should be the greater. Payment in either event was to be to the purchaser provided he sued within the time limited therefor in the act, unless he purchased the commodity involved for use or consumption in his trade or business, for in that event, presumably, the first buyer had passed the overcharge on to those who had in turn purchased from him and it would be inequitable for him to recover and impractical to find those who had actually suffered from the overcharge. But, to prevent a violator in either category from wholly escaping the con

sequences of his violation, the section provided for payment to the Administrator whenever a purchaser for any reason was not entitled to sue. From these provisions it seems clear that the policy of the statute was not to punish violators who could prove that their violation was neither wilful nor the result of failure to take [fol. 18] practicable precautions, but only to make them give up the proceeds of their violation, either as restitution to the buyer or, to prevent the violator's unjust enrichment, to the Administrator. But, as to violators who were unable to prove that their violation was neither wilful nor the result of failure to take practicable precautions it was the policy of the statute to require payment not only of the amount of the recoverable overcharges, but up to three times that amount in the discretion of the court. Thus, assuming that to allow a violator who was unable to prove that his violation was neither wilful nor the result of his failure to take practicable precautions, (one whom we may call for convenience a culpable violator) to deduct a payment such as the one under consideration would indeed frustrate the clearly defined policy of the act. National Brass Works v. Commissioner, 9 Cir., 1953, 205 F. 2d 104, the question arises as to whether Pacific Mills was such a violator or not, for if it was not, no statutory policy would be violated by permitting it to deduct its payment to the Administrator. Jerry Rossman Corp. v. Commissioner, 2 Cir., 1949, 175 F. 2d 711; National Brass Works v. Commissioner, 9 Cir., 1950, 182 F. 2d 526; Hershey Creamery Co. v. United States, 1952, 101 F. Supp. 877, 122 Ct. Cl. 423."

Accordingly, in the OPA cases there was statutory authority for a distinction between innocent and wilful violators, and since the Act itself made the distinction, it was possible to find that the allowance of an innocent and non-negligent overcharge as a deduction would not in any way impair or frustrate the policy of the Act. But the policy of the state weight limitation laws under consideration is to place all violators on the same basis without recognition of degrees or character of guilt. This being true, it would

clearly frustrate the policy of the statutes if the distinction should be made by a court in applying the provisions of Section 23 (a) (1) (A) of the Internal Revenue Code. To [fol. 19] the extent that the deductions should be allowed because of innocence or due care the taxpayer would be relieved of the consequences of his violation, although the state law itself made no such distinction.

The plaintiff also questions the disallowance by the Commissioner of sums paid by the plaintiff for the taxable years on account of fines for traffic violations, but the Court is of the opinion that plaintiff has failed to carry the burden of proof to show that the allowance of these sums would not frustrate the policy of state or municipal laws. The proof does not clearly show the character of the particular laws involved or the circumstances under which the fines were levied and paid.

Another item involves fines paid under a Kentucky statute which required that motor vehicles be equipped with certain mechanical signal devices to give warning when the vehicle was to make a turn. It is shown that the statute was later construed as not requiring the mechanical device if the truck driver gave a hand signal of his intention to make a turn; and it is a fair conclusion from the record that the fines were levied not because of failure to give a signal at any particular intersection or at any particular time, but rather on account of the failure of the vehicle to have the necessary equipment. This being true, the Court feels that the allowance of these fines as deductions would not frustrate any clearly defined policy of the state statute and consequently that the plaintiff was entitled to deduct them from gross income for the particular years involved.

A judgment will be submitted in conformity with this memorandum and either party may, if desired, submit suggestions for additional findings of fact or conclusions of law.

WM. E. MULLER, Judge.

[fol. 20] IN UNITED STATES DISTRICT COURT

JUDGMENT—Entered February 2, 1956

This cause, having been heard by the Court on September 23, 1955, and in accordance with the memorandum of the Court, it is,

ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of plaintiff, Hoover Motor Express Co., Inc., and against the defendant, United States of America, in respect to the taxable year 1951, in the amount of $710.39, and with respect to the taxable year 1952, in the amount of $55.56, together with interest thereon in respect to both years, as provided by law, from November 1, 1954, but recovery of the remaining portion of plaintiff's suit is hereby denied.

The parties herein shall bear their respective costs.

Dated this 2nd day of February, 1956.

/s/ WM. E. MILLER, Judge, United States District Court.

Attest: A True Copy, U. S. District Court, Middle District of Tennessee, By GUY W. COOPER, D. C.

Approved for Entry: L. B. ORMES, Clerk, /s/ JUDSON HARWOOD, Attorney for Plaintiff, /s/ FRED ELLEDGE, JR., Attorney for Defendant.

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[fol. 32] MINUTE ENTRY OF ARGUMENT AND SUBMISSION—December 13, 1956 (omitted in printing)

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IN UNITED STATES COURT OF APPEALS

JUDGMENT—January 4, 1957

The issue in this case is whether fines paid by a truck operator for violation of state laws prescribing weight limitations are deductible from gross income as ordinary

of the Internal Revenue Code of 1939, which provides that, in computing net income, there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. The district court held that such fines were not deductible under the above-mentioned section of the statute. The taxpayer challenged the decision of the district court on the ground that none of the violations for which the penalties were imposed were wilful; and that it had [fol. 33] taken all practicable precautions to avoid such violation. Deductions allowed by the statute are matters of legislative grace; and the burden is on the taxpayer to show his claim is within its provisions. *United States v. Olympic Radio and Television*, 349 U.S. 232. The Bureau of Internal Revenue and the courts have, from time to time, narrowed the generally accepted meaning of the language used in Sec. 23(a) in order that tax deduction consequences might not frustrate sharply defined national or state policies prescribing particular types of conduct. Where a taxpayer has violated a federal or a state statute and incurred a fine or penalty, he has not been permitted a tax deduction for its payment. *Commissioner v. Heininger*, 320 U.S. 467, 473.

The trial court in the instant case held that the underlying policy of the laws under which the fines were paid was not only to protect the highways of the state but also to protect the persons using them. The trial court further declared that assuming the taxpayer took every precaution that could fairly be demanded consistent with a practical operation of its business, and that it did not act with wilful intent, nevertheless, the allowance of the claimed deductions would frustrate the clearly defined policies of the applicable state weight limitation laws. The claimed deductions were, therefore, disallowed. With these views, we concur.

The judgment of the district court is accordingly affirmed upon the opinion of Judge Miller, 135 Fed. Supp. 818.

[fol. 34] Clerk's Certificate to Foregoing Transcript
(omitted in printing)

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[fol. 35] Supreme Court of the United States

No. 862, October Term, 1956

(Title omitted)

Order Allowing Certiorari—June 17, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is consolidated with No. 932 and a total of two hours allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

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No. ~~[illegible]~~ 95

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HOOVER MOTOR EXPRESS CO., INC.,
*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,
*Respondent.*

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# PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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JUDSON HARWOOD,
515 Nashville Trust Building,
Nashville, Tennessee,
*Attorney for Hoover Motor Express Co., Inc.*

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## Subject Index



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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1956**

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# No.

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HOOVER MOTOR EXPRESS CO., INC.,
*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,
*Respondent.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, Hoover Motor Express Co., Inc., a Tennessee Corporation engaged in business as a motor carrier of freight, pursuant to certificates of convenience and necessity issued by the Interstate Commerce Commission prays that the Writ of Certiorari issue to review a decision of the United States Court of Appeals for the Sixth Circuit which held that Petitioner could not deduct as an operating expense for income tax purposes fines paid to various states because its trucks had in some way exceeded the weight limitations fixed by state statute. In the vast majority of instances in which fines were imposed the entire vehicle was within the permissible weight limitations, but the weight on one axle was excessive, usually because of some shifting of freight during transit. The Court of Appeals held that said sums were not deductible even though

none of the violations of the weight laws was wilful and none resulted from the failure of Petitioner to take every precaution which could fairly be demanded of it.

## Opinions Below

The opinion of the Court of Appeals which affirmed the opinion of the District Court for the Middle District of Tennessee was entered on January 4, 1957 and is copied in the Appendix hereto at page 12.

The opinion of the District Court is reported in 135 Fed. Supp. 818, and is copied in the Appendix hereto at page 13.

## Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

The District Court is given jurisdiction by Sec. 1346 Title 28, U. S. C.

## Questions Presented

1. Whether a common carrier of freight by motor vehicle may deduct as an operating expense for income tax purposes overweight fines which it has paid to the states where the violations of the State Weight laws were not wilful and the carrier took every precaution that could fairly be demanded to comply with the State Weight laws.

2. Whether a lawful business which incurs an item of expense which cannot be avoided by the exercise of ordinary and reasonable care is entitled to deduct such expense in computing its income tax even though such expense is denominated as a fine or penalty.

## Statute Involved

The applicable statute is Section 23(a)(1)(A) of the Internal Revenue Code, which provides:

> "In computing net income there shall be allowed as deductions . . . all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or busines. . ."

## Statement of the Case

Petitioner is a common carrier of freight by motor vehicle certificated by the Interstate Commerce Commission. It is authorized to and does transport freight to and from points in Georgia, Alabama, Tennessee, Kentucky, Missouri and Ohio.

All of the states through which Petitioner operates have statutes limiting the size and weight of trucks. These statutes vary in some respects, but all fix maximum weight for an entire vehicle. They also fix the maximum weight for each axle so that frequently a vehicle is within the maximum allowance for the entire vehicle but, at the time of weighing by representatives of a state, one axle is carrying too much of the overall weight so that an axle violation results. As found by the Courts in this case, this situation usually results from some shifting of cargo during transit.

On September 10, 1942 the Commissioner of Internal Revenue by express ruling held that overweight fines paid by motor carriers were deductible under Section 23 of the Revenue Act above quoted. A subsequent ruling by a different Commissioner was issued effective November 30, 1950, which reversed the prior ruling.

Upon audit of Petitioner's tax returns for the taxable years 1951-1953, inclusive, fines paid during those years

were disallowed as a deductible expense and additional tax and interest was assessed against Petitioner based upon such disallowance. Petitioner paid the tax and interest and filed claims for refund, which were denied, and thereupon Petitioner filed this suit in the District Court for the recovery of the tax and interest attributable to the disallowance of the overweight fines.

Upon the trial of the case, Petitioner offered proof to show that no violation of any of the weight laws was wilful and that it took every precaution which it could reasonably take to insure compliance with the statutes of all states.

The District Court in its opinion, which was adopted by the Court of Appeals, in denying recovery stated:

> "It appears that the fines paid by the plaintiff for the taxable years resulted in large measure, probably in the vast majority of instances, because one or more axles of the vehicle involved carried weight in excess of the per axle limitation imposed by the various states, although in these instances the vehicle with its load of freight was within the overall weight limitations. The proof shows that such violations usually occurred because of a sifting of the freight within the vehicle during transit."
>
> "* * * Assuming that it took every precaution that could fairly be demanded consistent with a practical operation of its business, and assuming further that it did not act with wilful intent, the Court is of the opinion that to allow the claimed deductions from gross income for the taxable years would nevertheless frustrate the clearly defined policies of the applicable state weight limitation laws."

## Reasons for Granting the Writ

1. The decision of the Court of Appeals in this case is in conflict with a decision of the Court of Appeals for the Second Circuit in the case of *Rossman Corp. vs. Commissioner*, 175 F.2d 711. In the *Rossman* case the Court in construing the decision of this Court in the case of *Commissioner vs. Heininger*, 320 U.S. 467, 64 S.Ct. 249, 88 L. Ed. 171, held that "there are 'penalties' and 'penalties', and that some are deductible and some are not." (page 713). The Court also held that penalties were deductible if violations which resulted in imposition of penalty were not wilful; and the taxpayer had exercised proper care in endeavoring to comply with the act involved and that the allowance of such a deduction would not "frustrate" the act.

In the case now before the Court; the Court of Appeals held that the fact that the Petitioner did not act with wilfull intent and did take all reasonable precautions was wholly immaterial. Under this reasoning no penalty would ever be deductible, contrary to the ruling of the Court in the Rossman case that some penalties are deductible.

2. The Court of Appeals in this case has decided an important question of Federal law which has not been, but should be settled by this Court.

Since Section 23 (a) of the Revenue Act makes no reference to the lawful or unlawful character of the expenses which are deductible, this Court should determine whether there is any difference between wilful or negligent violation of statuts and non-wilfull and non-negligent violations in applying the judicial doctrine of disallowing such fines and penalties.

3. The decision of the Court of Appeals makes an improper and erroneous legal conclusion from the assumed facts. If Petitioner has taken every precaution that could fairly be demanded and it did not act with wilful intent,

the allowance or disallowance of the deduction could have no bearing whatever on future violations and, therefore, the allowance of the deduction could not frustrate the defined policies of state laws.

4. The decision of the Court of Appeals results in unequal taxation because it disallows, as a deduction, an expense of doing business which, from the assumption of facts upon which the decision is based, cannot be avoided in the particular lawful business in which Petitioner is engaged.

## Argument

There are a number of cases from lower Federal Courts dealing with the right to deduct, as an operating expense, fines or penalties. In this regard, the Court of Appeals for the Second Circuit in the case of *Rossman Corp.* vs. *Commissioner*, 175 F. 2d 711, at page 713, stated:

> "The Revenue Act does not declare that penalties may not be deducted; the doctrine is a judicial gloss—and, for that matter, a gloss of the lower courts only, save as the Supreme Court recognized it by implication in Commissioner v. Heininger."

In *Commissioner* vs. *Heininger*, 320 U.S. 467, 64 S.Ct. 249, 88 L. Ed. 171, referred to in the *Rossman* case above quoted, this Court, in recognizing this "judicial gloss", cited in footnote 8 several cases. The facts in each case involved fines or penalties which resulted from violations of statutes which were of necessity either wilful or the result of negligence.

One of the cases cited is that of *Burroughs Building Material Co.* vs. *Commissioner* (CCA 2d), 47 F. 2d 178. In that case the question presented involved the deductibility of fines which resulted from violations of statutes prohibiting price fixing, and these violations of necessity were wilful. While the Court held against the taxpayer, in the course of opinion it stated at page 180:

> "Undoubtedly expenditures which are in themselves immoral, such as bribery of public officials to secure protection of an unlawful business, would not have to be allowed in order consistently to justify a deduction of fines paid for violations of law involving no moral turpitude and practically inevitable."

In the *Rossman* case decided by the same Court (CCA2), when presented squarely with the question, the Court held that a determination of whether the violations were wilful or negligent as opposed to non-wilful and non-negligent was material in deciding whether fines or penalties were deductible. In so doing the Court, speaking through Chief Judge Learned Hand, in referring to the decision of this Court in the *Heininger* case, stated at page 713:

> "On the other hand, it is also possible to read it (the Heininger case) as meaning that, whether the claimed deduction be of legal expenses or of fines or forfeitures, its allowance depends upon the place of sanctions in the scheme of enforcement of the underlying act. We think that the second is the right reading; in short that there are "penalties" and "penalties", and that some are deductible and some are not."
>
> "Perhaps the deduction of a fine or forfeiture after an "administrative finding of guilt," is more likely to "frustrate" the "sharply defined policies" of a statute which imposes it, than the deduction of the legal expenses of an unsuccessful defence—though that seems questionable—*but certainly there is no more ground for taking as "a rigid criterion" the imposition of the fine than the incurrence of the expenses.* Each may "frustrate the sharply defined policies" of a statute; that will depend upon how one views their deterrent effect. *We hold therefore that in every case the question must be decided ad hoc.*" (Emphasis added)
>
> "One may indeed argue, as the Commissioner does, that the more unsparing and relentless was the pursuit of offenders, however innocent they may have been of any wilful violation of the regulations, the more solicitous would they become to comply, and the more effec-

tive would be the enforcement of the Act. That has been a school of penology since the time of Draco; but it has not been the only school, and, as we read Commissioner v. Heininger, supra, the Supreme Court did not accept it."

The Court also recognized the importance of proper care in endeavoring to comply with the statute involved and at least inferred that before the allowance of the deduction could "frustrate" the Act there must be a finding of lack of due care. In this respect the Court stated (page 714):

> "On the other hand, lack of proper care would be relevant to * * * whether the allowance would "frustrate" the Act."

This Court judicially knows that the Interstate Commerce Commission regulates the rates which common carriers may charge for their services, and all expenses of transportation are material in determining proper charges. It is, therefore, most important to the proper regulation of rates of motor carriers for the Interstate Commerce Commission, as well as carriers, to have this Court rule expressly on the questions squarely presented in this case. If States impose unavoidable costs to carriers and elect to denominate such costs as fines when, from a practical standpoint the payments are clearly remedial, the entire earnings of a common carrier can be completely absorbed by this element of expense because it has to be paid entirely from net income after taxes. This is certainly a very harsh burden to place upon a legitimate business when it is doing everything it can reasonably be expected to do to operate in a lawful manner and to perform the service for the public which it is legally obligated to perform. The allowance of the deductions in this case could not frustrate the enforcement of the applicable State statutes.

This Court has never expressly held that ordinary and necessary expenses are not deductible because the deduction may tend to frustrate sharply defined national or State policies. In the case of *Lilly* vs. *Commissioner*, 343 U.S. 90, 72 S. Ct. 497, this Court, in discussing the Heininger case, stated:

> "Neither that decision nor the rule suggested by it requires disallowance of petitioners' expenditures as deductions in the instant case.
>
> Assuming for the sake of argument that, under some circumstances, business expenditures which are ordinary and necessary in the generally accepted meanings of those words may not be deductible as "ordinary and necessary" expenses under 23(a)(1)(A) when they "frustrate sharply defined national or state policies proscribing particular types of conduct, supra, nevertheless the expenditures now before us do not fall in that class."

It is the insistence of Petitioner here that the ruling of the Court in the Lilly case is equally applicable here.

## Conclusion

Petitioner most respectfully insists that the Federal Revenue statute is a revenue producing statute and not a policing statute, and the particular wording of State statutes should have no bearing whatever on the deductibility of unavoidable business expenses, otherwise the Revenue Act would of necessity be construed differently in different States.

The expenses involved in this case are just as ordinary and necessary in this particular business as is the purchase of gasoline or the payment of wages to the employees, and

Congress did not intend to deny the deduction of such expense items merely because a State has seen fit to denominate them as fines or penalties.

Petitioner, therefore, respectfully insists that the lower Courts should be reversed.

Respectfully submitted,

JUDSON HARWOOD,
*Attorney for Hoover Motor Express Co., Inc.*

## APPENDIX A

No. 12,831

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

HOOVER MOTOR EXPRESS COMPANY, INC., Appellant

vs.

UNITED STATES OF AMERICA, Appellee

ORDER

Before: SIMONS, Chief Judge; STEPHENS and MCALLISTER, Circuit Judges

The issue in this case is whether fines paid by a truck operator for violation of state laws prescribing weight limitations are deductible from gross income as ordinary and necessary business expenses under Section 23(a)(1)A of the Internal Revenue Code of 1939, which provides that, in computing net income, there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. The district court held that such fines were not deductible under the above-mentioned section of the statute. The taxpayer challenged the decision of the district court on the ground that none of the violations for which the penalties were imposed were wilful; and that it had taken all practicable precautions to avoid such violation. Deductions allowed by the statute are matters of legislative grace; and the burden is on the taxpayer to show his claim is within its provisions. *United States & Olympic Radio and Television*, 349 U.S. 232. The Bureau of Internal Revenue and the courts have, from time to time, narrowed the generally accepted meaning of the language used in Sec. 23(a) in order that tax deduction consequences might not frustrate sharply defined national or state policies prescribing particular types of conduct. Where a taxpayer has violated a federal or a state statute and incurred a fine

or penalty, he has not been permitted a tax deduction for its payment. *Commissioner* v. *Heininger*, 320 U.S. 467, 473.

The trial court in the instant case held that the underlying policy of the laws under which the fines were paid was not only to protect the highways of the state but also to protect the persons using them. The trial court further declared that assuming the taxpayer took every precaution that could fairly be demanded consistent with a practical operation of its business, and that it did not act with wilful intent, nevertheless, the allowance of the claimed deductions would frustrate the clearly defined policies of the applicable state weight limitation laws. The claimed deductions were, therefore, disallowed. With these views, we concur.

The judgment of the district court is accordingly affirmed upon the opinion of Judge Miller, 135 Fed. Supp. 818.

Approved for entry:

_____,
*United States Circuit Judge.*

## UNITED STATES DISTRICT COURT

### Memorandum Opinion

(Entered October 11, 1955)

The principal issue for decision is whether fines paid by a truck operator for violations of state laws prescribing maximum weight limitations are deductible from gross income as ordinary and necessary business expenses under Section 23 (a) (1) (A) of the Internal Revenue Code which provides as follows:

> "In computing net income there shall be allowed as deductions: . . . all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . ."

The Commissioner of Internal Revenue, on September 10, 1942, issued a special ruling that such fines were deductible. That ruling remained in effect until it was rescinded by a new ruling of the Commissioner issued November 30, 1950.

The reasons for revocation of the earlier ruling are set forth in the regulation of November 30, 1950, as follows:

> "Reconsideration has been given to the conclusion heretofore reached by the Bureau that fines paid by truck operators for violations of State laws prescribing maximum weights, loads, and sizes of vehicles are deductible from gross income as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code.
>
> "That conclusion was based upon the understanding that the fines in question were paid in lieu of fees which would have been payable for permits to operate overloaded or overlength vehicles, and that such permits were generally granted by State highway authorities. The fines were, therefore, regarded as more in the nature of tolls than penalties.
>
> "Upon reconsideration of the question involved it appears that the premise on which the Bureau's conclusion was based was erroneous. It is therefore held that fines paid by truck operators for violations of State laws prescribing maximum weights, loads and sizes of vehicles are penalties which are not deductible as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code. (See Burroughs Building Material Co. v. Commissioner, 47 Fed. (2d) 178, Ct. D. 297, C. B. X-1, 397 (1931); and G. C. M. 11358, C. B. XII-1, 29 (1933).)"

Plaintiff is a common carrier of freight by motor vehicle operating in the states of Georgia, Alabama, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, and Missouri, all of which have truck weight limitation laws which are similar in general character although they vary with respect to details and with respect to the maximum weight limitations imposed. For the years 1951 through 1953, plaintiff paid various fines imposed upon it because of its violations of such laws, and in its income tax returns for those years, deducted the amounts of the fines from gross income as ordinary and necessary business expenses under the provisions of Section 23(a)(1)(A) of the Internal Revenue

Code. Its returns for those years, having been audited and the deductions disallowed by the Commissioner consistently with his ruling of November 30, 1950, the plaintiff paid the resulting additional income and excess profits taxes for the years involved and instituted the present action for their recovery.

The theory of the plaintiff is that the weight laws of the states in which it operates are so restrictive in character and have such variations in permissible weight limitations that it is practically impossible to operate the plaintiff's motor carrier business without incurring the penalties imposed, notwithstanding good faith efforts upon its part to comply with the weight regulations. It is insisted that the plaintiff has carried the burden of proof to show that its violation of the weight laws were neither wilful nor negligent and that the fines were incurred despite all reasonable efforts and precautions on its part to comply. On the basis of this reasoning, it is insisted that the question is controlled by such cases as Jerry Rossman Corporation v. Commissioner, (2 Cir.) 175 F. 2d 711; National Brass Works v. Commissioner, 9 Cir., 182 F. 2d 526; and Commissioner v. Pacific Mills, 1 Cir., 207 F. 2d 177, in which it was ruled that overcharges under the Emergency Price Control Act of 1942 which were neither wilful nor the result of failure to take practicable precautions were deductible as ordinary and necessary business expenses within the meaning of the Internal Revenue Code.

The defendant denies that the plaintiff has carried the burden of showing that its violations were neither wilful nor the result of failure to exercise due care or to take proper precautions, and insists, in any event, that the exactions under the weight limitation laws which the plaintiff was required to pay, constituted "penalties", or were punitive in nature, and that to allow them as deductions would frustrate the clearly defined policy of state laws within the doctrine of Great Northern Ry. Co. v. Commissioner, 8 Cir., 40 F. 2d 372, Chicago R. I. & P. Ry. Co. v. Commissioner, 7 Cir., 47 F. 2d 990, Burroughs Bldg. Material Co. v. Commissioner, 2 Cir., 47 F. 2d 178, Commissioner v. Longhorn Portland Cement Co., 5 Cir., 148 F. 2d 276, and other decisions of like import.

It appears that the fines paid by the plaintiff for the taxable years resulted in large measure, probably in the vast majority of instances, because one or more axles of the vehicle involved carried weight in excess of the per axle limitation imposed by the various states, although in these instances the vehicle with its load of freight was within the overall weight limitations. The proof shows that such violations usually occurred because of a shifting of the freight within the vehicle during transit.

In other instances, the proof suggests that violation occurred when the plaintiff picked up freight in small communities or from business concerns located on the open highways and loaded its vehicles in reliance upon the weight of the load as shown on the bill of lading which was prepared by the shipper, there being no opportunity to weight the shipments until they arrived at a major terminal point. In still other cases, the violations resulted when it became necessary for the plaintiff to substitute a tractor of heavier weight after a breakdown enroute because a tractor of similar weight was not at that time available. The plaintiff also introduced evidence to the effect that other freight haulers regularly pay fines under the weight limitation laws and it is argued from the entire record that the situation is such that the plaintiff's business can not be operated on a practical basis without necessarily incurring the fines and penalties imposed by the law.

On the other hand, it is argued for the defendant that many other transportation companies are able to operate within the weight limitations, and it is insisted that by reasonable efforts the plaintiff would find no difficulty in avoiding violations, for example, by improving its methods of loading and packing the freight within the vehicle to avoid shifting in transit, by closer supervision of its operations, and by more careful inspection and adjustment of its weighing facilities.

In the view which the Court takes of the case, it is not necessary to determine whether the plaintiff did all which should reasonably be required of it as a prudent operator to comply with the weight limitations involved. Assuming that it took every precaution that could fairly be demanded

consistent with a practical operation of its business, and assuming further that it did not act with wilful intent, the Court is of the opinion that to allow the claimed deductions from gross income for the taxable years would nevertheless frustrate the clearly defined policies of the applicable state weight limitation laws.

There can be no doubt that the underlying policy of the laws under which the fines were paid is not only to protect the highways of the state but also to protect the persons using them. Violations of the statutes are punishable by the imposition of a fine which is penal in character. No distinction is made in the statutes between an innocent or non-negligent violation, on the one hand, and one which is either wilful or due to a negligent failure to take adequate precautions, on the other hand. It was evidently considered that the purposes of the statutes could be accomplished more effectively by treating all violators alike. This thought is borne out by the provisions commonly found in statutes of this character that the Commissioner of Highways, or other proper authority, shall have discretionary power to grant special permits for freight movements in excess of the prescribed weight limitations, the inference being that, in the absence of such special permit, neither hardship nor good faith shall constitute a defense to a violation.

There are a number of cases holding that statutory penalties are not deductible from gross income as ordinary business expenses. The reason for this doctrine was succintly stated in Commissioner of Internal Revenue v. Longhorn Portland Cement Co., 5 Cir., 148 F. 2d 276, 277, in which deductibility was denied of sums paid by the taxpayer in satisfaction of statutory penalties incurred for violations of state antitrust laws:

> " * * * that the penalty is a punishment inflicted by the state upon those who commit acts violative of the fixed public policy of the sovereign, wherefore to permit the violator to gain a tax advantage through deducting the amount of the penalty as a business expense, and thus to mitigate the degree of his punishment, would frustrate the purpose and effectiveness of that public policy."

Upon like reasoning deductions have been denied for fines and costs paid for violations of state laws relating to price fixing, Burroughs Bldg. Material Co. v. Commissioner, supra; and for sums paid by railroads for violations of the federal safety appliance laws. Chicago R. I. & P. Ry. Co. v. Commissioner, supra; and Great Northern Ry Co. v. Commissioner, supra.

But the soundness of the rule which would deny deductibility to all statutory penalties, or which would make the punitive character of the exaction an inflexible criterion, has been seriously questioned in later cases, particularly the case of Jerry Rossman Corp. v. Commissioner, supra. In that case Judge Hand pointed out that "there are 'penalties' and 'penalties' ", and ruled that the real test in the case of a penalty, as in the case of any other exaction, is whether its allowance as a deduction would frustrate the sharply defined policy of the statute, the question being decided in every case ad hoc. Applying this rule, the court found, as other courts have done in similar cases, that the allowance as a deduction of an innocent and non-negligent overcharge under the Emergency Price Control Act of 1942 did not frustrate the policy of that particular Act.

It is significant to note that Judge Hand held in the Rossman case that the overcharge under the Emergency Price Control Act was not a penalty, although he went further and ruled hypothetically that if it should be regarded as penal in nature, its allowance as a deduction did not frustrate the policy of the Act. It is clear from the opinion in the case that this result was reached because the court found that the Administrator, in applying the Act, had adopted the policy of making a distinction between innocent violators and those who had violated the Act because of wilfulness or a failure to take practicable precautions. Accordingly, the court found that where the Administrator had accepted the overcharge as sufficient without requiring the payment of treble damages, such acceptance was evidence of the fact that he regarded the overcharge as having been made innocently, with the result that no policy of the Act was frustrated.

The policy which had been pursued by the Administrator

was incorporated into the Act itself by the 1944 amendment of Section 205(e), and the other OPA cases, subsequent to the Rossman case, were decided on the basis of the amendment. Thus, in the case of Commissioner v. Pacific Mills, supra, the question before the court was whether a payment to the Office of Price Administration in settlement of claims for overcharges was deductible as an ordinary and necessary business expense under Section 23(a)(1)(A) of the Internal Revenue Code. In holding that the overcharge was deductible, the court found that its allowance as a deduction would not frustrate the Act. The reasoning of the court is clearly indicated by the following excerpt from its opinion: [207 F. 2d 177, 182]:

> "It is clearly evident from the wording of the amended statute itself, as well as from the legislative history of the amendatory act, that the fundamental policy of the act as amended was to draw a sharp line of distinction between innocent violators on the one hand, and those who had either violated the act wilfully or else had failed to take practicable precautions to comply, on the other. To this end violators were subjected by Sec. 205(e) of the amended act to payment of no more than their overcharges for the preceding year, or $25, whichever was greater, when they were able to prove that their violation was neither wilful nor the result of their failure to take practicable precautions against the occurrence of their violation. But violators who could not prove both their lack of wilfulness and that they had taken practicable precautions to comply were subjected in the court's discretion to the payment of up to three times the amount of their overcharges for the preceding year or else to not less than $25 nor more than $50, whichever sum should be the greater. Payment in either event was to be to the purchaser provided he sued within the time limited therefor in the act, unless he purchased the commodity involved for use or consumption in his trade or business, for in that event, presumably, the first buyer had passed the overcharge on to those who had in turn purchased from him and it would be in-

equitable for him to recover and impractical to find those who had actually suffered from the overcharge. But, to prevent a violator in either category from wholly escaping the consequences of his violation, the section provided for payment to the Administrator whenever a purchaser for any reason was not entitled to sue. From these provisions it seems clear that the policy of the statute was not to punish violators who could prove that their violation was neither wilful nor the result of failure to take practicable precautions, but only to make them give up the proceeds of their violation, either as restitution to the buyer or, to prevent the violator's unjust enrichment, to the Administrator. But, as to violators who were unable to prove that their violation was neither wilful nor the result of failure to take practicable precautions it was the policy of the statute to require payment not only of the amount of the recoverable overcharges, but up to three times that amount in the discretion of the court. Thus, assuming that to allow a violator who was unable to prove that his violation was neither wilful nor the result of his failure to take practicable precautions, (one whom we may call for convenience a culpable violator) to deduct a payment such as the one under consideration would indeed frustrate the clearly defined policy of the act, National Brass Works v. Commissioner, 9 Cir., 1953, 205 F. 2d 104, the question arises as to whether Pacific Mills was such a violator or not, for if it was not, no statutory policy would be violated by permitting it to deduct its payment to the Administrator. Jerry Rossman Corp. v. Commissioner, 2 Cir., 1949, 175 F. 2d 711; National Brass Works v. Commissioner, 9 Cir., 1950, 182 F. 2d 526; Hershey Creamery Co. v. United States, 1952, 101 F. Supp. 877, 122 Ct. Cl. 423."

Accordingly, in the OPA cases there was statutory authority for a distinction between innocent and wilful violators, and since the Act itself made the distinction, it was

possible to find that the allowance of an innocent and non-negligent overcharge as a deduction would not in any way impair or frustrate the policy of the Act. But the policy of the state weight limitation laws under consideration is to place all violators on the same basis without recognition of degrees or character of guilt. This being true, it would clearly frustrate the policy of the statutes if the distinction should be made by a court in applying the provisions of Section 23 (a) (1) (A) of the Internal Revenue Code. To the extent that the deductions should be allowed because of innocence or due care the taxpayer would be relieved of the consequences of his violation, although the state law itself made no such distinction.

The plaintiff also questions the disallowance by the Commissioner of sums paid by the plaintiff for the taxable years on account of fines for traffic violations, but the Court is of the opinion that plaintiff has failed to carry the burden of proof to show that the allowance of these sums would not frustrate the policy of state or municipal laws. The proof does not clearly show the character of the particular laws involved or the circumstances under which the fines were levied and paid.

Another item involves fines paid under a Kentucky statute which required that motor vehicles be equipped with certain mechanical signal devices to give warning when the vehicle was to make a turn. It is shown that the statute was later construed as not requiring the mechanical device if the truck driver gave a hand signal of his intention to make a turn; and it is a fair conclusion from the record that the fines were levied not because of failure to give a signal at any particular intersection or at any particular time, but rather on account of the failure of the vehicle to have the necessary equipment. This being true, the Court feels that the allowance of these fines as deductions would not frustrate any clearly defined policy of the state statute and consequently that the plaintiff was entitled to deduct them from gross income for the particular years involved.

A judgment will be submitted in conformity with this memorandum and either party may, if desired, submit sug-

gestions for additional findings of fact or conclusions of laws.

WM. E. MILLER,
*Judge.*

Attest: A True Copy
L. B. ORMES, *Clerk*,
U. S. District Court, (Seal)
Middle District of Tennessee,
By S. W. DORRIS, *D. C.*

JUDGMENT

(Entered February 2, 1956)

This cause, having been heard by the Court on September 23, 1955, and in accordance with the memorandum of the Court, it is,

ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of plaintiff, Hoover Motor Express Co., Inc., and against the defendant, United States of America, in respect to the taxable year 1951, in the amount of $710.39, and with respect to the taxable year 1952, in the amount of $55.56, together with interest thereon in respect to both years, as provided by law, from November 1, 1954, but recovery of the remaining portion of plaintiff's suit hereby denied.

The parties herein shall bear their respective costs.

Dated this 2nd day of February, 1956.

(S.) WM. E. MILLER, *Judge*,
United States District Court.

Attest: A True Copy,
U. S. District Court,
Middle District of Tennessee,
By GUY W. COOPER, *D. C.*

Approved for Entry:

L. B. ORMES, *Clerk*, (Seal)
(S.) JUDSON HARWOOD,
*Attorney for Plaintiff.*
(S.) FRED ELLEDGE, JR.,
*Attorney for Defendant.*

## APPENDIX B

Sec. 23. Deductions from Gross Income.

In computing net income there shall be allowed as deductions:

(a) [as amended by Sec. 121(a) of the Revenue Act of 1942, c. 619, 56 Stat. 798]. *Expenses.*—

(1) *Trade or business expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business,

* * * * * *

(26 U.S.C. 1952 ed., Sec. 23.)

8 Burns, Indiana Statutes Annotated, Part 2 (1952):

47-536a. *Fines proportional to amount of overweight —Impounding overweight vehicles.*—Any person who operates or causes to be operated any vehicle or combination of vehicles having a weight in excess of one [1] or more of the limitations set out in section 8 [§ 47-536] shall be guilty of a misdemeanor and on conviction shall be fined as follows:

* * * * * *

When a person is apprehended operating or causing to be operated a vehicle or combination of vehicles on any public highway in the state of Indiana with a weight in excess of the limitations set out in section 8, said vehicle or combination of vehicles shall be impounded and kept within the custody of the officer apprehending such vehicle or combination of vehicles and to be moved only as directed by said officer; and such officer shall cause said truck to be kept impounded until its weight is so reduced as to comply with the limitations expressed in section 8 and until all fines and costs levied on the basis of such excess weight are paid

or stayed, and any person so apprehended who shall move such vehicle or combination of vehicles or cause the same to be moved, after the same is impounded by said officer, other than as expressly directed by said officer, shall be subject to be charged with a felony and upon conviction shall be subject to a fine of not less than $500 nor more than $1,000 to which may be added imprisonment in the Indiana state reformatory or state prison for a period of not less than one [1] nor more than five [5] years.

[*Amendments.* The 1953 amendments substituted the words "in the sum of five dollars, and shall in addition be assessed the following civil penalties" for the words "as follows."]

Code of Alabama (1940):

Sec. 83. *Penalties; in general.*—The operation of any motor truck, semi-trailer truck or trailer, in violation of any section of this chapter, or of the terms of any permit issued hereunder, shall constitute a misdemeanor, and the owner thereof, if such violation was with his knowledge or consent, and the operator thereof, shall on conviction be fined not less than one hundred dollars, and may also be imprisoned or sentenced to hard labor for the county for not less than thirty days nor more than sixty days.

Georgia Code Annotated:

68-9921. *Violation of 68-405 et seq., relating to size of vehicle, weight of load, and lamps.*—Any person, firm, corporation, association, trustee, receiver, or other fiduciary, or owner, employee or other agent, who, by himself, itself, or themselves, or through or in connection with another, violates or participates in violation of any of the provisions of section 68-405 *et seq.*, relating to size of vehicle, weight of load, and lamps, shall be guilty of a misdemeanor and punished as such.

68-9925. *Violation of terms of excessive weight permit.*—Any operator of a motor vehicle operating under

the special permit to operate a vehicle of excessive weight, as prescribed by section 68.407.1, or the owner of such vehicle, shall be guilty of a misdemeanor if such operator or owner shall violate any of the terms or conditions of such special permit.

15 Jones, Illinois Statutes Annotated:

85.065. *Penalties—Revocation of license—Disposition of fines—Appointment of investigators.* Any person wilfully violating the provisions of this Act shall, except as otherwise provided herein, upon conviction, be fined in a sum not to exceed the amount hereinafter set forth.

* * * * *

*Provided*, that any offender who shall have been found guilty of a violation of any section of this Act and who shall thereafter be convicted of a second violation of such section, may be fined in a sum not exceeding double the penalty herein provided for a first offense, and in addition thereto may have his certificate or license issued by the Secretary of State revoked for a period not exceeding three months, and for a third or subsequent violation of the same section of this Act the certificate or license may, in addition to the fine provided for the second offense, be revoked for a period not exceeding six months. * * *

Kentucky Revised Statutes (1953):

Chapter 189

TRAFFIC REGULATIONS AND EQUIPMENT OF VEHICLES

* * * * *

189.221 *Basic height, width, length and weight limits for trucks and semi-trailer trucks.* No person shall operate on any highway, except such highways as may be designated by the Commissioner of Highways under

the provisions of KRS 189.222, any of the following vehicles:

[Here follows a description of the maximum allowable height, width, length, and weight of motor and semi-trailer trucks.]

189.222 *Increased height, length and weight limits on designated highways.* The Commissioner of Highways, in respect to highways which are a part of the state-maintained system, by official order, may increase on designated highways or portions thereof, the maximum height, length and gross weight prescribed in KRS 189.221, if in the opinion of said commissioner, the increased height, length and weight designated by him are justified by the strength, safety and durability of the designated highways, and said highways do not appear susceptible to unreasonable and unusual damage by reason of such increases; and said commissioner is authorized to estaiblish reasonable classifications of such roads and to fix a different maximum for each classification. However, in no event shall any motor truck or semi-trailer truck, including any part of the body or load, exceed the following dimensions and weights:

* * * * *

189.270 * * * *Special permit to exceed weight, height, width or length limits.* (1) The department may prescribe, by orders of general application, rules and regulations for the issuance by it of permits for the operation of motor trucks, tractors, semi-trailers and trailers, whose gross weight including load, height, width or length exceeds the limits prescribed by this chapter or which in other respects fail to comply with the requirements of this chapter. Permits may be issued by the department for stated periods, special purposes and unusual conditions, and upon such terms in the interest of public safety and the preservation of the highways as the department may, in its discretion, require. The department shall require, as a condition to the issuance

of the permit, that the applicant pay a reasonable fee, to be fixed by it, and may require that the applicant give bond, with approved surety, to indemnify the state or counties against damage to highways or bridges resulting from use by the applicant. The operation of motor trucks, tractors, semi-trailers or trailers, in accordance with the terms of any such permit shall not constitute a violation of this chapter if the operator has the permit, or a copy of it, authenticated as the department may require, in his possession.

(2) No person shall operate any motor truck, tractor, semi-trailer or trailer, in violation of the terms of the permit.

* * *

189.670 * * * *Public policy as to trucks declared.* It is hereby declared to be the public policy of this state that heavy motor trucks, alone or in combination with other vehicles, increase the cost of highway construction and maintenance, interfere with and limit the use of highways for normal traffic thereon, and endanger the safety and lives of the traveling public, and that the regulations embodied in this chapter with respect to motor trucks, semi-trailer trucks and semi-trailers are necessary to achieve economy in highway costs, and to permit the highways to be used freely and safely by the traveling public.

189.990 * * * *Penalties.* * * *

(2) (a) Any person who violates the weight provisions of KRS 189.221 or 189.222 shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in an amount equal to two cents per pound for each pound of excess load when the excess is 2,000 pounds or less, three cents per pound when the excess exceeds 2,000 pounds and is 3,000 pounds or less, five cents per pound when the excess exceeds 3,000 pounds and is 4,000 pounds or less, seven cents per pound when the excess exceeds 4,000 pounds and is 5,000

pounds or less, and nine cents per pound when the excess exceeds 5,000 pounds but in no case to exceed $500.

(b) Any person who violates any provision of * * * KRS * * * 189.270 * * * for which another penalty is not specifically provided, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding $500.

* * * * * *

6 Mississippi Code Annotated (1942):

8275. *Penalties for misdemeanor.*—(a) It is a misdemeanor for any person to violate any of the provisions of this Act unless such violation is by this Act or other law of this State declared to be a felony.

(b) Every person convicted of a misdemeanor for a violation of any of the provisions of this Act for which another penalty is not provided shall for first conviction thereof be punished by a fine of not more than $100.00 or by imprisonment for not more than ten days; for a second such conviction within one year thereafter such person shall be punished by a fine of not more than $200.00 or by imprisonment for not more than twenty days or by both such fine and imprisonment; upon a third or subsequent conviction within one year after the first conviction such person shall be punished by a fine of not more than $500.00 or by imprisonment for not more than six months or by both such fine and imprisonment.

2 Williams, Tennessee Code Annotated (1934):

1166.36. *Penalty for violation.*—Any person, firm or corporation owning or operating any freight motor vehicle over the roads of this state with a greater gross weight than that authorized by the registration thereof shall be compelled to register such freight motor vehicle in the class within which its then weight shall fall, which registration shall not be taken for a less period of time

than one year, and shall further be required to pay a penalty of twenty (20) per centum of the amount of the registration fee in the class within which its then weight shall fall; it shall be the duty of the county court clerk to collect said penalty of twenty (20) per centum at the same time said new registration is made, and to remit said penalty to the department of finance and taxation as other motor vehicle registration funds are remitted; no officer shall be authorized to relieve, release, or waive said twenty (20) per centum penalty or any part thereof; in computing the amount of registration fee due in each case, the person so registering said vehicle shall be credited with the amount of registration fee paid for the class in which he has registered such truck; provided, however, that the penalty of twenty (20) per centum hereinabove provided shall be computed upon the gross amount of the larger fee, and not upon the difference between the registration fees in the higher class and lower class.

Any person, firm or corporation owning or operating any freight motor vehicle over the roads of this state in excess of the maximum limits herein provided or with a greater gross weight than that authorized by the registration thereof shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than $25.00 or more than $300.00.

It shall be the duty of the driver of any freight motor vehicle licensed under this act to carry in said vehicle at all times a duplicate of the registration certificate for said vehicle, which duplicate certificate shall be available for inspection by employees and agents of the department of finance and taxation, members of the Tennessee highway patrol, or other peace officers. Any person failing to have in his possession such certificate or refusing to furnish same for inspection, as required by this paragraph, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $2.50 nor more than $50.00.

No vehicle found to be loaded in excess of the maximum weight provided under the class in which the same has been registered shall be taken from the charge and custody of the arresting officer until the fine imposed by this act upon conviction shall have been paid or secured, nor until the registration fees provided by this act shall have been paid and the proper identification tags affixed to such vehicle; provided further that no such vehicle found to have gross weight in excess of the maximum prescribed by law shall be permitted to continue on its way until the weight thereof is reduced to the lawful limit.

NEW KENTUCKY STATUTE

Commonwealth of Kentucky

GENERAL ASSEMBLY

Second Extraordinary Session, 1956

Senate Bill No. 1

Monday, March 19, 1956

The following bill, which originated in the Senate, was ordered to be printed.

AN ACT relating to motor trucks and motor vehicles establishing and regulating the maximum weight and dimensions thereof and authorizing the Commissioner of Highways to designate classification of highways for the purpose of regulating said maximum weights.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. Section 189.010 of the Kentucky Revised Statutes is amended to read as follows:

As used in this chapter, unless the context requires otherwise,

(1) "Department" means the Department of Highways.

(2) "Highway" means any public road, street, avenue, alley or boulevard, bridge, viaduct or trestle and the approaches to them.

(3) "Motor truck" means any motor-propelled vehicle designed for carrying freight or merchandise. It shall not include self-propelled vehicles designed primarily for passenger transportation, but equipped with frames, racks or bodies having a load capacity of not exceeding one thousand pounds.

(4) "Operator" means the person in actual physical control of a vehicle.

(5) "Semitrailer" means a vehicle designed to be attached to, and having its front end supported by, a motor truck or truck tractor, intended for the carrying of freight or merchandise and having a load capacity of over one thousand pounds.

(6) "Truck tractor" means any motor-propelled vehicle designed to draw and to support the front end of a semitrailer. The semitrailer and the truck tractor shall be considered to be one unit.

(7) "Sharp curve" means a curve of not less than thirty degrees.

(8) "State Highway Patrol" means any agency for the enforcement of the highway laws established pursuant to KRS 12.030, 176.020 and 281.380.

(9) "Steep grade" means a grade of exceeding seven percent.

(10) "Trailer" means any vehicle designed to be drawn by a motor truck or truck-tractor, but supported wholly upon its own wheels, intended for the carriage of freight or merchandise, and having a load capacity of over one thousand pounds.

(11) "Unobstructed highway" means a straight, level, first-class road upon which no other vehicle is passing or attempting to pass, and upon which no other vehicle or pedestrian is approaching in the opposite direction, closer than three hundred yards.

(12) "Vehicle" includes all agencies for the transportation of persons or property over or upon the public highways of this Commonwealth and all vehicles

passing over or upon said highways, excepting road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails, and such vehicles as are propelled by electric power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five miles beyond the city limit of any municipality. "Motor vehicle" includes all vehicles as defined above which are propelled otherwise than by muscular power.

Section 2. Section 189.222 of the Kentucky Revised Statutes is amended to read as follows:

The Commissioner of Highways, in respect to highways which are a part of the state-maintained system, by official order, may increase on designated highways or portions thereof, the maximum height, length and gross weight prescribed in KRS 189.221, if in the opinion of said commissioner, the increased height, length and weight designated by him are justified by the strength, safety and durability of the designated highways, and said highways do not appear susceptible to unreasonable and unusual damage by reason of such increases; and said commissioner is authorized to establish reasonable classifications of such roads and to fix a different maximum for each classification. However, in no event shall any motor truck or tractor semitrailer combination, including any part of the body or load, exceed the following dimensions and weights:

(1) Height, 12½ feet.

(2) Length, truck tractors and semitrailers, 48 feet; motor trucks, 35 feet.

(3) Weight, 18,000 pounds per single axle, with axles less than 42 inches apart to be considered as a single axle; 32,000 pounds on two axles in tandem arrange-

ment which are spaced 42 inches or more apart and less than 120 inches apart; 600 pounds per inch of aggregate width of all tires; gross weight, 59,640 pounds.

(4) A tolerance of not more than five percent per axle load shall be permitted before a carrier is deemed to have violated subsection (3) of this section. In no event shall the gross weight exceed 59,640 pounds.

Section 3. Whereas, it is to the best interest of the people of the Commonwealth of Kentucky that the provisions of this Act take effect at the earliest possible date, an emergency is declared to exist and this Act shall become effective immediately upon its passage and approval by the Governor.

## Applicable Tennessee Statutes

59-1101 *Operation of vehicles injurious to highways must conform to regulations.*—No vehicle, truck, engine, or tractor of any kind, whether such vehicle be propelled by steam, gasoline, or otherwise, shall be permitted to operate upon any street, road, highway, or other public thoroughfare which, either by reason of its weight or the character of its wheels, will materially injure the surface or foundation of such street, road, highway, public thoroughfare, including the bridges thereon, unless and until the owner or operator of such vehicle of any kind, shall have complied with such rules and regulations as may be prescribed by the department of highways and public works and department of safety, relating to the use of such highways by such vehicles.

59-1102. *Regulations governing wheel surfaces.*—The state department of highways and public works is empowered to prescribe by regulations the manner in which the wheels of vehicles shall be equipped in order to protect the surface and foundation of streets, roads and highways including the bridges thereon.

59-1103. *Maximum weight may be lowered when—Notices to be posted.*—From January 15th to April 15th of each year, and at any other time when by reason of repairs, weather conditions, or recent construction of the road, the

maximum weight herein permitted would damage the road, the state department of highways and public works may specify any lower maximum weight, which in the discretion of such department, is necessary in order to protect such streets, roads, highways, or other public thoroughfares from unnecessary injury or damage; provided, that notice of such reduction in weight of load shall be given by said department by posters posted at the terminal of the road and all detours for one (1) week before such reduction of load becomes effective.

59-1106. *Liability for damages to highways.—Suit by District Attorney.*—The owner to any vehicle driven upon the public thoroughfare, in violation of any of the provisions of §§59-1101—59-1107, or regulations issued thereunder shall also be liable in an action for damages caused to such public thoroughfares, such action to be prosecuted in the name of the state by the district attorney of the district in which the violation occurs.

59-1107. *Maximum length of vehicles.*—No motor vehicle as defined in 59-1103 whose length, including any part of its body or load, exceeds thirty-five feet, and no motor vehicle with trailer or semitrailer attached, the total length of which combination, including any part of the body or load, exceeds forty-five (45) feet, shall be operated on any highway.

59-1109. *Maximum weight per single axle or group of axles allowed.*—Except as otherwise provided by law, no freight motor vehicle shall be operated over, on, or upon the public highways of this state where the total weight on a single axle, or any group of axles, exceeds the weight limitations set forth below in subsections A, B, C, D, E and F:

A. No axle shall carry a load in excess of eighteen thousand (18,000) pounds.

An axle load as set out herein is defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes, forty (40) inches apart, extending across the full width of the vehicle.

B. No group of axles shall carry a load in pounds in

excess of the value set forth in the following table corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot:

| Distance in Feet Between First and Last Axles of Group | Maximum Load in Pounds on Group of Axles |
|---|---|
| 4 | 32,000 |
| 5 | 32,000 |
| 6 | 32,000 |
| 7 | 32,000 |
| 8 | 32,610 |
| 9 | 33,580 |
| 10 | 34,550 |
| 11 | 35,510 |
| 12 | 36,470 |
| 13 | 37,420 |
| 14 | 38,360 |
| 15 | 39,300 |
| 16 | 40,230 |
| 17 | 41,160 |
| 18 | 42,080 |
| 19 | 42,990 |
| 20 | 43,900 |
| 21 | 44,800 |
| 22 | 45,700 |
| 23 | 46,590 |
| 24 | 47,470 |
| 25 | 48,350 |
| 26 | 49,220 |
| 27 | 50,090 |
| 28 | 50,950 |
| 29 | 51,800 |
| 30 | 52,650 |
| 31 | 53,490 |
| 32 | 54,330 |
| 33 | 55,160 |
| 34 | 55,980 |
| 35 | 55,980 |
| 36 | 55,980 |
| 37 | 55,980 |

The weights set forth in column 2 of the above table shall constitute the maximum permissive gross weight for any such vehicle, or combination of such vehicles.

C. The total gross weight concentrated on the highway surface from any tandem axle group shall not exceed thirty-two thousand (32,000) pounds for each such tandem axle group. A "tandem axle group" is defined to be two (2) or more axles spaced forty (40) inches or more apart from center to center having at least one (1) common point of weight suspension.

D. No freight motor vehicle, truck tractor, trailer or semi-trailer, nor combinations of such vehicles, shall be operated over, on or upon the public highways of this state where the total gross weight of such vehicle or combination thereof including the load thereon, exceeds fifty-five thousand nine hundred eighty (55,980) pounds, except such vehicles or combinations thereof, operate under special permits now authorized by law.

E. A freight motor vehicle, as used in this section, includes both the tractor or truck and the trailer, semi-trailers, if any, and the weight of any such combination shall not exceed the maximum fixed herein; provided, however, that no freight motor vehicle with motive power shall haul more than one (1) vehicle.

F. No freight motor vehicle shall haul a trailer on any highway of this state when such trailer (including its load) weighs more than thirty-five hundred (3,500) pounds, and the hauling of a trailer which, including its load, weighs more than thirty-five hundred (3,500) pounds is hereby prohibited and declared unlawful. For the purposes hereof a trailer is defined as a vehicle without motive power designed or used for carrying freight or property wholly on its own structure, provided, however, that it shall not be unlawful for any motor vehicle subject to 59-1107—59-1112 to have a semitrailer, which, for the purposes hereof, is defined as a vehicle for the carrying of property or freight and so designed that some part of the weight of such semitrailer or its load rests upon or is carried by the motor vehicle to which it is attached. Provided, that the hauling of a trailer (to the extent herein permitted) or a semitrailer, shall be subject to the further provisions hereof. Provided, further, that said 59-1107—59-1112 are not in-

tended to prohibit the movements of spools carrying wire or cable, when used for construction or repair purposes.

59-1111. *Special permits for moving vehicles of excess weight or size.—Reduction of weight and size regulations.—Signs indicating.*—The commissioner of highways and public works shall have the authority to grant special permits for the movements of freight motor vehicles carrying gross weights in excess of the excess of the gross weights set forth in 59-1109 or dimensions in excess of the dimensions set forth in 59-1107, 59-1108. The commissioner of highways and public works shall have the authority to reduce the maximum gross weight of freight where through weakness of structure in either the surface of or the bridges over such lateral highways or secondary roads, the maximum loads provided by law, in the opinion of the commissioner, injure or damage such roads or bridges. The appropriate county officials shall have the same authority as to county roads.

59-1112. *Penalty for violation of* 59-1107—59-1111—*Injunction proceedings—Disposition of fines, penalties and forfeitures.*—Each violation of 59-1107—59-1109 and each violation of restrictions on the maximum gross weight of freight motor vehicles duly adopted and promulgated by the commissioner of highways and public works, under 59-1111, and each violation of rules and regulations duly adopted and promulgated by the commissioner of safety under said section, shall be a misdemeanor and, upon conviction thereof, a fine of not less than twenty-five ($25.00) dollars nor more than five hundred dollars ($500.00) shall be assessed. Any taxpayer of the state shall have the right by injunction proceeding to enjoin any actual or threatened use of any highway prohibited by said sections. All fines, penalties and forfeitures of bonds imposed or collected under this section shall be paid over within ten (10) days after receipt thereof to the department of safety with a statement accompanying the same, setting forth the action or proceedings in which such moneys were collected, the name and residence of the defendant, the nature of the offense, and fine, penalty or forfeiture imposed.

IN THE

# SUPREME COURT OF THE UNITED STATES

## No. 95

HOOVER MOTOR EXPRESS CO., INC.,
*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,
*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

## BRIEF OF PETITIONER

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## BRIEF OF PETITIONER

### Opinions Below

The opinion of the District Court for the Middle District of Tennessee is reported in 135 Fed. Supp. 818, and is copied in the transcript of the record beginning at page 9.

The opinion of the United States Court of Appeals for the Sixth Circuit is reported in 241 F. 2d 459, and is copied in the transcript of the record beginning at page 18.

### Jurisdiction

The judgment of the United States Court of Appeals was entered on January 4, 1957. (R-20) The Petition for a Writ of Certiorari was granted June 17, 1957. (R-20) This Court is given jurisdiction by 28 U.S.C., Section 1254.

## Questions Presented

1. Whether a common carrier of freight by motor vehicle may deduct as an operating expense for income tax purposes overweight fines which it has paid to the States where the violations of the State Weight laws were not wilful and the carrier took every precaution that could fairly be demanded to comply with the State Weight laws.

2. Whether a lawful business which incurs an item of expense which cannot be avoided by the exercise of ordinary and reasonable care is entitled to deduct such expense in computing its income tax even though such expense is denominated as a fine or penalty.

## Statute Involved

The applicable statute is Section 23(a)(1)(A) of the Internal Revenue Code, which provides:

> "In computing net income there shall be allowed as deductions . . . all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. . . ."

## Statement of the Case

Since the record in this case consists only of the pleadings and the opinions of the two lower Courts, there is no controversial question of fact and the case, therefore, involves only a question of law.

Petitioner is a common carrier of freight by motor vehicle certificated by the Interstate Commerce Commission. It is authorized to and does transport freight to and from points in Georgia, Alabama, Tennessee, Kentucky, Missouri and Ohio.

All of the states through which Petitioner operates have statutes limiting the size and weight of trucks. These

statutes vary in some respects, but all fix maximum weight for each axle so that frequently a vehicle is within the maximum allowance for the entire vehicle but, at the time of weighing by representatives of a state, one axle is carrying too much of the overall weight so that an axle violation results. As found by the Courts in this case, this situation usually results from some shifting of cargo during transit.

On September 10, 1942 the Commissioner of Internal Revenue by express ruling held that overweight fines paid by motor carriers were deductible under Section 23 of the Revenue Act above quoted. A subsequent ruling by a different Commissioner was issued effective November 30, 1950, which reversed the prior ruling.

Upon audit of Petitioner's tax returns for the taxable years 1951-1953, inclusive, fines paid during those years were disallowed as a deductible expense and additional tax and interest was assessed against Petitioner based upon such disallowance. Petitioner paid the tax and interest and filed claims for refund, which were denied, and thereupon Petitioner filed this suit in the District Court for the recovery of the tax and interest attributable to the disallowance of the overweight fines.

Upon the trial of the case, Petitioner offered proof to show that no violation of any of the weight laws was wilful and that it took every precaution which it could reasonably take to insure compliance with the statutes of all states.

The District Court in its opinion, which was adopted by the Court of Appeals, in denying recovery stated:

> "It appears that the fines paid by the plaintiff, for the taxable years resulted in large measure, probably in the *vast majority of instances*, because one or more axles of the vehicle involved carried weight in excess of the per axle limitation imposed by the various states,

although in these instances the vehicle with its load of freight was within the overall weight limitations. The proof shows that such violations usually occurred because of a shifting of the freight within the vehicle during transit."

"* * * Again assuming that it took every precaution that could fairly be demanded consistent with a practical operation of its business, and assuming further that it did not act with willful intent, the Court is of the opinion that to allow the claimed deductions from gross income for the taxable years would nevertheless frustrate the clearly defined policies of the applicable state weight limitation laws." (R. 12)

The District Court denied the right of plaintiff to recover the taxes resulting from the disallowance of the overweight fines, although it did permit recovery of other items. (R-17)

The Court of Appeals affirmed the District Court and adopted the District Court's conclusions. (R-19)

In view of the fact that the lower Courts based their decisions upon the assumption that the Petitioner took every precaution that could fairly be demanded consistent with the practical operation of its business and that it did not act with wilful intent, the transcript of the testimony was not printed on appeal, and the case was heard in the Court of Appeals on the legal question presented by the Court's decision.

## Argument

Since Petitioner is a north-south carrier, practically all of its trucks are required to cross the States of Tennessee and Kentucky. Prior to 1953 both of these States had restrictive statutes limiting the overall weight of trucks to 42,000 lbs., and 18,000 lbs. for axle which was considerably

loss than the permissible weight of any of the surrounding States, including all of the other States through which Petitioner operates. Since Petitioner's trucks were required to cross these States and since both States had much more restrictive weight limitations, a great majority of the fines paid by Petitioner were paid to the States of Tennessee and Kentucky.

In 1953 Tennessee amended its statute raising the permissible gross weight to 55,980 lbs. and also raising the per axle limit. The material portions of this statute are copied in the Appendix B to the Petition for Certiorari beginning at page 34.

In 1956 the commonwealth of Kentucky amended its applicable statute so as to increase the gross permissible weight from 42,000 lbs to 59,640 lbs. The per axle limit was also increased. Section 2 of that Act provides:

> "A tolerance of not more than five percent per axle load shall be permitted before a carrier is deemed to have violated subsection (3) of this section. In no event shall the gross weight exceed 59,640 pounds."

The prior Act made no allowance whatever for any tolerance on the per axle weight limitation.

The foregoing is a clear legislative recognition that a rigid axle weight limitation is impracticable and that some shifting of weight during transit is inevitable. The entire 1956 Kentucky Act is copied in Appendix B of the Petition for Certiorari beginning at page 31.

While the fines involved were paid during the years of 1951, 1952 and 1953 and subsequent amendments to State statutes would not affect the liability for the fines imposed, however, subsequent legislative enactments are quite material to determine whether the allowance of such fines

would, as held by the two lower Courts, frustrate the purpose and effectiveness of the State public policy.

Petitioner most respectfully insists that the allowances of the fines paid as an operating expense cannot possibly frustrate the enforcement of the State statutes because

(a) Since Petitioner took every precaution that could fairly be demanded of it and did not act with wilful intent, the allowance or disallowance cannot in any way be expected to diminish future violations because the taxpayer has done all that it could do to comply with the State statutes;

(b) One of the States has by express legislation recognized that some variation on the axles of the vehicles is inevitable, and such variation is not now a violation of the State Act, and both Tennessee and Kentucky have substantially increased the permissible gross weight and axle weight.

Another State to which petitioner paid fines, Indiana, by 1953 amendment, changed the so-called penal provision from fines to civil penalties (Appendix B of Petition for Certiorari, page 25). Petitioner insists that this is a clear legislative recognition that the operators of a trucking company are not criminals merely because a load of freight shifts slightly during transit.

There are a number of cases from lower Federal Courts dealing with the right to deduct, as an operating expense, fines or penalties. In this regard, the Court of Appeals for the Second Circuit in the case of *Rossman Corp.* vs. *Commissioner*, 175 F. 2d 711, at page 713, stated:

> "The Revenue Act does not declare that penalties may not be deducted; the doctrine is a judicial gloss—and, for that matter, a gloss of the lower courts only,

save as the Supreme Court recognized it by implication in Commissioner v. Heininger."

In *Commissioner* vs. *Heininger*, 320 U.S. 467, 64 S. Ct. 249, 88 L. Ed. 171, referred to in the *Rossman* case above quoted, this Court, in recognizing this "judicial gloss", cited in footnote 8 several cases. The facts in each case involved fines or penalties which resulted from violations of statutes which were of necessity either wilful or the result of negligence.

One of the cases cited is that of *Burroughs Building Material Co.* vs. *Commissioner* (CCA 2d), 47 F. 2d 178. In that case the question presented involved the deductibility of fines which resulted from violations of statutes prohibiting price fixing, and these violations of necessity were wilful. While the Court held against the taxpayer, in the course of opinion it states at page 180:

> "Undoubtedly expenditures which are in themselves immoral, such as bribery of public officials to secure protection of an unlawful business, would not have to be allowed in order consistently to justify a deduction of fines paid for violations of law involving no moral turpitude and practically inevitable."

In the *Rossman* case decided by the same Court (CCA 2), when presented squarely with the question, the Court held that a determination of whether the violations were wilful or negligent as opposed to the non-wilful and non-negligent was material in deciding whether fines or penalties were deductible. In so doing the Court, speaking through Chief Judge Learned Hand, in referring to the decision of this Court in the *Heininger case* stated at page 713:

> "On the other hand, it is also possible to read it (the Heininger case) as meaning that, whether the claimed

deduction be of legal expenses or of fines or forfeitures, its allowance depends upon the place of sanctions in the scheme of enforcement of the underlying act. We think that the second is the right reading; in short that there are "penalties" and "penalties", and that some are deductible and some are not."

"Perhaps the deduction of a fine or forfeiture after an "administrative finding of guilt," is more likely to "frustrate" the "sharply defined policies" of a statute which imposes it, than the deduction of the legal expenses of an unsuccessful defense—though that seems questionable—*but certainly there is no more ground for taking as "a rigid criterion" the imposition of the fine than the incurrence of the expense.* Each may "frustrate the sharply defined policies" of a statute; that will depend upon how one views their deterrent effect. *We hold therefore that in every case the question must be decided ad hoc.*" (Emphasis added)

"One may indeed argue, as the Commissioner does, that the more unsparing and relentless was the pursuit of offenders, however innocent they may have been of any wilful violation of the regulations, the more solicitous would they become to comply, and the more effective would be the enforcement of the Act. That has been a school of penology since the time of Draco; but it has not been the only school, and, as we read Commissioner v. Heininger, supra, the Supreme Court did not accept it."

The Court also recognized the importance of proper care in endeavoring to comply with the statute involved and at least inferred that before the allowance of the deduction could "frustrate" the Act there must be a finding of lack of due care. In this respect the Court stated (page 711):

"On the other hand, lack of proper care would be relevant to * * * whether the allowance would 'frustrate' the Act."

This Court judicially knows that the Interstate Commerce Commission regulates the rates which common carriers may charge for their services, and all expenses of transportation are material in determining proper charges. It is, therefore, most important to the proper regulation of rates of motor carriers for the Interstate Commerce Commission, as well as carriers, to have this Court rule expressly on the questions squarely presented in this case. If States impose unavoidable costs to carriers and elect to denominate such costs as fines when, from a practical standpoint the payments are clearly remedial, the entire earnings of a common carrier can be completely absorbed by this element of expense because it has to be paid entirely from net income after taxes. This is certainly a very harsh burden to place upon a legitimate business when it is doing everything it can reasonably be expected to do to operate in a lawful manner and to perform the service for the public which it is legally obligated to perform. The allowance of the deductions in this case could not frustrate the enforcement of the applicable State statutes.

This Court has never expressly held that ordinary and necessary expenses are not deductible because the deduction may tend to frustrate sharply defined national or State policies. In the case of *Lilly* vs. *Commissioner*, 343 U. S. 90, 72 S. Ct. 497, this Court, in discussing the *Heininger* case, stated:

"Neither that decision nor the rule suggested by it requires disallowance of petitioners' expenditures as deductions in the instant case.

"Assuming for the sake of argument that, under some circumstances, business expenditures which are

ordinary and necessary in the generally accepted meanings of those words may not be deductible as "ordinary and necessary" expenses under 23(a)(1)(A) when they "frustrate sharply defined national or state policies proscribing particular types of conduct," supra. Nevertheless the expenditures now before us do not fall in that class."

It is the insistence of Petitioner here that the ruling of the Court in the *Lilly* case is equally applicable here.

After the decision of the District Court in this case, the question was discussed in the November 29, 1955 issue of the TAX FORTNIGHTER as follows:

> "There are statutes which undoubtedly are so clearly penal in their character that the innocence or wilfullness of the violation would not be material. That would not seem to be true if the *primary* purpose of the statute here was to prevent injury to the highway and excessive maintenance costs, rather than considerations of public safety. The purpose of the legislation should determine whether wilfulness is a factor, and not whether the statute makes an express distinction between innocence and wilfullness. A harsh burden should not be imposed on a legitimate business enterprise on such ambiguous grounds."

The February 20, 1957 issue stated:

> "We questioned the correctness of the District Court's decision in this case, and the memorandum affirmance provides no inducement to change our view. The Courts' approach seems to us an oversimplification of the issue. For example, the District Court made no mention of the distinction between penal and remedial statutes, which was considered by the Tax Court in

Tank Truck Rentals, Inc., 26 T.C. No. 52, and the Sixth Circuit evidently saw no reason to discuss this vital question.

"It must be remembered that these cases rest on a dictum of the Supreme Court that deductions may be denied where allowance would frustrate a sharply defined policy of a state proscribing certain forms of conduct. (Cf. Heininger, 320 U.S. 467; Lilly, 343 U.S. 90.) This is implicitly vague. The law itself makes no distinction between legal and illegal expenses and it would seem that any judicial limitation must be reasonable, having regard to the nature of the prohibiting statute and of the offenses, as well as the practical side, which is supposed to be significant in taxation.

"The fact that the Supreme Court has upheld the deduction in both of the cases considered by it suggests that the issue is not one of pure black or white. The moral aspects must be balanced against the practical. The emphasis placed by the Supreme Court on competitive necessity in the Lilly case may be another strong clue to the correct approach."

Although the Court has consolidated this case with No. 109, *Tank Truck Rentals, Inc.* vs. *Commissioner*, because both cases involve the allowance or disallowance of overweight fines, the *Tank Truck* case does not involve the question here presented, that is, non-negligent and non-wilful violations.

## Conclusion

Petitioner most respectfully insists that the lower Courts should be reversed and the cause remanded.

Respectfully submitted,

JUDSON HARWOOD,
515 Nashville Trust Bldg.,
Nashville, Tennessee,
*Attorney for Hoover Motor Express Co., Inc.*

Nos. 862 and 982

# In the Supreme Court of the United States

OCTOBER TERM, 1956

HOOVER MOTOR EXPRESS CO., INC., PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

TANK TRUCK RENTALS, INC., PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

## MEMORANDUM FOR THE RESPONDENTS

J. LEE RANKIN,
*Solicitor General,*
*Department of Justice,*
*Washington 25, D. C.*

# In the Supreme Court of the United States

OCTOBER TERM, 1956

---

No. 862

HOOVER MOTOR EXPRESS CO., INC., PETITIONER

*v.*

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

---

No. 932

TANK TRUCK RENTALS, INC., PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

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## MEMORANDUM FOR THE RESPONDENTS

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The question presented in these cases is whether amounts paid by trucking concerns as fines or penalties for violations of state weight limitation laws are deductible as ordinary and necessary business expenses under the provisions of Section 23 (a) (1) (A) of the Internal Revenue Code of 1939. We

submit that the decisions below are correct for the reasons stated therein, namely, that allowance of the claimed deductions would frustrate the clearly defined public policies reflected by the applicable state laws. See *Textile Mills Corp.* v. *Commissioner*, 314 U. S. 326, 335–339; *Commissioner* v. *Heininger*, 320 U. S. 467, 473–475; *Lilly* v. *Commissioner*, 343 U. S. 90, 94–97. We believe, however, that review by this Court would be appropriate and, accordingly, do not oppose the granting of the petitions.

The Government, on behalf of the Commissioner of Internal Revenue, is filing a petition for a writ of certiorari to review the decisions of the Seventh Circuit in *Sullivan* v. *Commissioner* and *Ross* v. *Commissioner*, both 241 F. 2d 46, and in *Mesi* v. *Commissioner*, decided April 5, 1957 (1957 C. C. H., par. 9551). As is stated in the petition in those cases, the Seventh Circuit has decided an important question of federal tax law in such a way as to conflict with other decisions, and the rationale employed is out of harmony with the decisions in the present cases.

The courts below, applying the public policy doctrine, have denied deductions for fines paid because of violations of state weight limitation laws, even though, in some instances, the violations were unintentional and inadvertent and were, in a sense, an integral aspect of the taxpayers' business. In refusing, nevertheless, to allow the deduction on the ground that otherwise there would be a frustration of the public policy of the several states whose laws were broken, the courts below have reached a result

which appears inconsistent with the views of the Seventh Circuit which would allow a deduction so long as the expense is an integral aspect of the business.

For the reasons stated in the petition for a writ of certiorari being filed in the *Ross*, *Sullivan* and *Mesi* cases, *supra*, we do not oppose the granting of the petitions in the present cases.

Respectfully submitted,

J. LEE RANKIN,
*Solicitor General.*

MAY 1957.

U. S. GOVERNMENT PRINTING OFFICE 1957

TURN TO NEXT CARD

Nos. 95 and 109

# In the Supreme Court of the United States

OCTOBER TERM, 1957

HOOVER MOTOR EXPRESS CO., INC., PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

TANK TRUCK RENTALS, INC., PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

## BRIEF FOR THE RESPONDENTS

J. LEE RANKIN,
*Solicitor General,*
CHARLES K. RICE,
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# In the Supreme Court of the United States

OCTOBER TERM, 1957

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No. 95

HOOVER MOTOR EXPRESS CO., INC., PETITIONER

*v.*

UNITED STATES OF AMERICA

---

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

---

No. 109

TANK TRUCK RENTALS, INC., PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE

---

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

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## BRIEF FOR THE RESPONDENTS

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### OPINIONS BELOW

The opinion of the District Court in the *Hoover* case (H. R. 9–17)[1] is reported at 135 F. Supp. 818;

[1] References to the record in the *Hoover* case will be designated as H. R. ——; and to the record in the *Tank Truck* case, T. R. ——.

the opinion of the Court of Appeals for the Sixth Circuit (H. R. 18–19) is reported at 241 F. 2d 459. The finding of facts and opinion of the Tax Court in the *Tank Truck* case (T. R. 115a–136a) are reported at 26 T. C. 427; the opinion of the Court of Appeals for the Third Circuit (T. R. 138–141) is reported at 242 F. 2d 14.

## JURISDICTION

The judgment of the Court of Appeals in the *Hoover* case was entered on January 4, 1957. (H. R. 18.) The judgment of the Court of Appeals in the *Tank Truck* case was entered on March 6, 1957. (T. R. 142.) The petition for a writ of certiorari in the *Hoover* case was filed on March 27, 1957; the petition in the *Tank Truck* case was filed on April 22, 1957. The petitions in both cases were granted on June 17, 1957. (H. R. 20; T. R. 143.) The jurisdiction of this Court rests upon 28 U. S. C., Section 1254.

## QUESTION PRESENTED

Whether both courts below were correct in holding that amounts paid by the taxpayer trucking concerns as fines for violating state maximum weight laws are not deductible from gross income as ordinary and necessary business expenses under Section 23 (a) (1) (A) of the Internal Revenue Code of 1939.

## STATUTES AND RULING INVOLVED

Printed in the Appendix, *infra*, pp. 65–125, are Section 23 (a) (1) (A) of the Internal Revenue Code of 1939; I. T. 4042; and the relevant substantive and penal provisions of the maximum weight laws of the States of Alabama, Delaware, Georgia, Illinois,

Indiana, Kentucky, Maryland, Mississippi, Missouri, New Jersey, Ohio, Pennsylvania, Tennessee and West Virginia.

## STATEMENT

### NO. 95, HOOVER MOTOR EXPRESS CO., INC.

During the period involved, 1951 to 1953, inclusive, Hoover Motor Express Company, Inc., the taxpayer, was a common carrier of freight by motor vehicle, operating in the States of Georgia, Alabama, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, and Missouri. All of those states had truck weight limitation laws which were similar in general character, although they varied with respect to details and with respect to the maximum weight limitations imposed.[2] (H. R. 10.)

During the taxable years, the taxpayer paid various fines imposed upon it because of its violation of those laws, and in its income tax returns it deducted the amounts of the fines from gross income as ordinary and necessary business expenses. The Commissioner disallowed the deductions. The taxpayer paid the resulting additional income and excess profits taxes and instituted action in the District Court for their recovery. (H. R. 10–11.)

The District Court concluded that the deductions had been properly disallowed. In reaching this conclusion, it made no findings of willfulness or non-

[2] The pertinent substantive and penal provisions of the respective state laws are set forth in the Appendix herein, as follows: Georgia, pp. 73–75; Alabama, pp. 67–69; Mississippi, pp. 90–94; Tennessee, pp. 111–119; Kentucky, pp. 83–86; Ohio, pp. 101–107; Indiana, pp. 78–83; Illinois, pp. 75–78; Missouri, pp. 94–100.

willfulness vis-à-vis the taxpayer's violations, stating that it was not necessary for it to determine whether the taxpayer had done all which should reasonably have been required of it as a prudent operator to comply with the weight limitations provisions of the state laws. It found that the policy of the state weight limitation laws under consideration was to place all violators on the same basis without recognition of degrees or character of guilt, and from that premise it concluded that—assuming that the taxpayer had taken every precaution that could fairly be demanded consistent with a practical operation of its business and had not acted with willful intent—the amount of the fines paid could not be deducted from gross income, since their allowance as deductions

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[1] The District Court observed (H. R. 11-12):

> It appears that the fines paid by the plaintiff for the taxable years resulted in large measure, probably in the vast majority of instances, because one or more axles of the vehicle involved carried weight in excess of the per axle limitation imposed by the various states, although in these instances the vehicle with its load of freight was within the overall weight limitations. The proof shows that such violations usually occurred because of a shifting of the freight within the vehicle during transit.
>
> In other instances, the proof suggests that violations occurred when the plaintiff picked up freight in small communities or from business concerns located on the open highways and loaded its vehicles in reliance upon the weight of the load as shown on the bill of lading which was prepared by the shipper, there being no opportunity to weigh the shipments until they arrived at a major terminal point. In still other cases, the violations resulted when it became necessary for the plaintiff to substitute a tractor of heavier weight after a breakdown enroute, because a tractor of similar weight was not at that time available.

would have frustrated the clearly defined policies of the applicable state weight limitation laws. The Court of Appeals affirmed the judgment of the District Court. (H. R. 12–13, 16–17, 19.)

NO. 109, TANK TRUCK RENTALS, INC.

*General.* The taxpayer, Tank Truck Rentals, Inc., a Pennsylvania corporation, was engaged in the business of transporting bulk liquids by motor vehicles under lease or rental agreements with motor carriers which held operating certificates issued by the Interstate Commerce Commission and or the Public Utility Commissions of the various states in and through which the taxpayer carried on its activities. The taxpayer leased its motor vehicles to the certificated carriers and furnished its own employees as the driver-operators of the vehicles. (T. R. 115a.)

The taxpayer and the carriers for whom it transported the bulk liquids were engaged in "over-the-road" transportion, *i. e.*, transportation between towns or cities, but not solely within a municipality. They transported a substantial portion of the bulk liquids which were carried over-the-road by all motor carriers in the states in and through which the taxpayer operated during the taxable year 1951. (T. R. 115a–116a.)

In that year the taxpayer and its lessees, operating the motor vehicles both wholly within and between the following states, covered the following approximate distances, and made the following approximate number of trips in each of the states (T. R. 116a):

| State | No. of Miles | No. of Trips |
|---|---|---|
| Pennsylvania | 6,110,798 | 77,385 |
| Ohio | 971,643 | 5,293 |
| New Jersey | 856,973 | 14,146 |
| Delaware | 383,612 | 2,984 |
| Maryland | 314,960 | 16,712 |
| West Virginia | 238,750 | 3,937 |
| Totals | [1] 8,956,738 | 414,457 |

[1] Sic; should be 8,876,736.

In nearly all of the trips, either the transportation took place wholly within Pennsylvania, or Pennsylvania was involved as the originating or destination state. (T. R. 116a.)

*Equipment and material transported.* The motor vehicles used and operated by the taxpayer in the course of its business and leased during the taxable year consisted solely of truck tractor and semi-trailer tank combinations. The taxpayer owned and operated 142 truck tractors, each of which had two axles, and 112 semi-trailers, of which 62 had a single axle and 50 had two axles. The capacity of the tank on the single axle semi-trailers ranged from 4,500 to 5,000 gallons. The capacity of the tank on the two or tandem axle semi-trailers ranged from 4,600 to 5,900 gallons. (T. R. 116a.)

The taxpayer's equipment in 1951 was substantially the same as that used and operated in the industry generally. The bulk of the semi-trailer fleet of the other carriers contained tanks with a capacity ranging from 1,500 to 5,000 gallons, although some car-

riers had a small percentage of tanks, 10 percent or less of their entire fleet, with a capacity of 4,000 gallons, acquired mainly prior to the outbreak of World War II. During World War II, only tanks with a capacity between 4,500 and 5,000 gallons were available for purchase because of wartime restrictions on manufacture. (T. R. 117a.)

The unloaded weight of the truck-tractors owned and used by the taxpayer and the industry generally was approximately 12,000 pounds, and the unloaded weights of the single and tandem axle semi-trailer tanks were approximately 8,000 and 10,000 pounds, respectively. The unloaded weight of the combination accordingly ranged between 20,000 pounds and 22,000 pounds. (T. R. 117a.)

The approximate weights of bulk liquids which the taxpayer and the industry commonly carried were as follows (T. R. 117a):

| | |
|---|---|
| Gasoline | 6 lbs. a gallon |
| Kerosene | 6¾ lbs. a gallon |
| Domestic Fuel Oil | 7 lbs. a gallon |
| Bunker C Oil | 8 lbs. a gallon |

*The state laws.* Prior to and during the taxable year, each of the aforementioned states prescribed by statute the maximum weight for motor vehicles using its public highways. (T. R. 117a.) As summarized by the Tax Court, the statutory maximum gross weight for the truck tractor and semi-trailer combination owned, used and operated by taxpayer was, for each of these states in 1951, as follows (T. R. 118a):

| State | Statutory Citation | Maximum Gross Weight[2] |
|---|---|---|
| Pennsylvania | 75 P. S. § 453 (g) | 45,000 lbs. |
| New Jersey | N. J. S. A. § 39.3-84 | 60,000 lbs. |
| Ohio | Page's Ohio Gen. Code Anno. § 7246 | Statutory formula which results in range from 57,000 to 57,600 lbs. |
| Delaware | Del. Code Anno. Title 21, Chapter 45, § 4503 | 48,000 lbs. for single axle trailers; 60,000 lbs. for tandem axle trailers |
| West Virginia | 1951 Supp. to West Va. Code of 1949 Anno. § 1721 (463) | Statutory formula which results in range from 54,000 to 60,800 lbs. |
| Maryland | Flack's 1951 Anno. Code of Maryland § 278, Art. 66½ | Statutory formula which results in gross weight of 65,000 lbs. |

[1] The pertinent substantive and penal provisions of the various state weight limitation laws are set forth in the Appendix herein, as follows: Delaware, pp. 69-73; Maryland, pp. 86-90; New Jersey, p. 101; Ohio, pp. 101-107; Pennsylvania, p. 107-111; West Virginia, pp. 119-125.

[2] On June 30, 1955, Act No. 70, amending the Pennsylvania Vehicle Code, was enacted allowing, *inter alia*, for the combination of truck tractor and semi-trailer motor vehicles used by the bulk liquid motor carrier industry, a maximum gross weight of 50,000 pounds for the single axle semi-trailers and of 60,000 pounds for the tandem axle semi-trailer, effective on date of enactment. (T. R. 130a.)

*Loading practice and economic factors involved.* In the conduct of its business, the taxpayer would receive instructions from the certificated carriers to whom it leased its equipment, to pick up and transport the bulk liquid from one point to another. Although the amount of liquid which was loaded into the taxpayer's semi-trailer tanks was supervised by loaders employed by the source furnishing the product, it was the taxpayer's practice to load all tanks to maximum capacity consistent with a small three per cent tolerance for expansion. In 1951, it was the common and widespread practice of over-the-road bulk liquid carriers by motor vehicle, operating in Pennsylvania and the other states herein involved, to fill semi-trailer tanks to capacity with bulk liquid. (T. R. 118a.)

The revenue of the taxpayers, its lessees, and of the industry generally, was predicated on rates based on the number of gallons transported per mile. In 1951 the rates were keyed to the uniform practice of filling tanks to capacity. If the weights carried had been within the limitations of the Pennsylvania statute, operating costs would have increased because of the additional number of trips required, thus causing the taxpayer to operate at a loss. The taxpayer could not have increased its rental charge to its lessees per gallon hauled to compensate for transporting a smaller number of gallons each trip, since the competitive practices in the industry were such that had it demanded an increased rental, while the industry generally was filling its tanks to capacity and exceeding the Pennsylvania weight limitations, it would have forced itself out of business. The lessees would have referred the business to other lessors of equipment, or would have carried the liquid in their own fleet of vehicles. (T. R. 124a.)

Competition among themselves and with the railroads and private carriers of the refineries played a major part in the continuance of the practice by the over-the-road motor carriers of bulk liquids to key their rates to tanks filled to capacity and consciously to exceed the Pennsylvania weight limitations. So long as its competitors maintained the practice of carrying the minimum of 4,500 gallons on each trip and of paying the fines when the violations were discovered, no carrier could increase its rates to compensate for the reduction in operating revenue which

would result from carrying legal loads in Pennsylvania. Nor could the industry as a whole have increased its rates so as to enable it to operate vehicles profitably while complying with Pennsylvania law, without losing the business to the railroads and to the private refineries operating their own motor vehicle equipment. (T. R. 124a–125a.)

Aside from the competitive disadvantage and the loss of revenue, neither the taxpayer nor the other carriers operated their equipment, except on rare occasions, with less than maximum capacity of liquid in their tanks because of the unsafe condition which the surge in partially loaded tanks created when the motor vehicles were stopped or the equipment was negotiated around the curves of the highways. Some of the tanks owned by the taxpayer and by others in the industry were divided into three compartments. None of these multiple compartment tanks was engineered during World War II,[1] and the taxpayer had only 20 of them in 1951. It was possible to avoid the road hazard of a partially loaded tank by filling two of the compartments to capacity and leaving the third empty. However, it was not feasible from the point of view of revenue to operate the equipment at two-thirds capacity. Moreover, insofar as the transportation of domestic fuel and Bunker C oils resulted in the equipment being overloaded under the Pennsylvania statute, such oils could only be carried in

[1] During World War II and until the latter part of 1950, taxpayer's overweight vehicles were not stopped by the Pennsylvania authorities (T. R. 123a, 129a).

single and not in multiple compartment tanks. (T. R. 125a.)

During the taxable year, it was possible to purchase semi-trailer tanks having a capacity less than the 4,500 gallons minimum tank then in current operation by taxpayer and the industry. However, it would not have been economical for the taxpayer to have scrapped its entire fleet of existing tanks and to have purchased smaller equipment which could have transported full loads at legal weights within the State of Pennsylvania. To have done this, while the other carriers continued to operate their existing equipment filled to capacity, would have put taxpayer at a competitive disadvantage insofar as rates and revenue were concerned. (T. R. 125a–126a.)

Although Pennsylvania was the focal point of the taxpayer's operations, the essence of its lease arrangements with the certificated carriers was the assurance that its fleet would be available at peak periods in other states and for interstate carriage, as well as in Pennsylvania. The equipment in the industry was required to be flexible in the sense that it could economically be used generally throughout the states in which it was operated. The rate structure in the states neighboring Pennsylvania, in and through which the taxpayer and the other carriers operated their vehicles, was based on hauling maximum gallonage per trip consistent with the gross weight laws of approximately 60,000 pounds. Equipment of the size suitable for legal weight in Pennsylvania could not have been economically operated in the other states. (T. R. 126a.)

*Fines paid.* During the taxable year, the taxpayer incurred and paid the aggregate sum of $37,965 as fines for operating motor vehicles on the highways in violation of the state statutes prescribing maximum weights. Of this amount, the sum of $35,165 constituted fines imposed for exceeding the maximum weights prescribed by the statute of the particular state in which the fine was imposed. The balance, or $2,800, constituted fines imposed by the State of New Jersey for operating in that state vehicles which exceeded the maximum gross weight prescribed by the Pennsylvania statute, but which did not exceed the 60,000 pounds gross weight otherwise prescribed by the New Jersey statute. These fines were imposed in accordance with the reciprocity provisions for New Jersey law which made applicable the Pennsylvania weight limitation to Pennsylvania vehicles on New Jersey roads. (T. R. 119a).

The following table shows the number and dollar amounts of the fines and costs which the taxpayer paid in 1951 to each of the states involved (T. R. 119a):

| State | Number of Fines | Dollar Amt. of Fines | Dollar Amt. of Costs | Total |
|---|---|---|---|---|
| Pennsylvania: | | | | |
| At $50 each | 649 | $32,450.00 | $2,700.00 | $35,150.00 |
| At $25 each | 62 | 1,550.00 | 226.75 | 1,776.75 |
| New Jersey | 7 | 2,800.00 | 30.00 | 2,830.00 |
| Maryland | 7 | 310.00 | 20.91 | 330.91 |
| Ohio | 9 | 305.00 | 20.10 | 325.10 |
| West Virginia | 10 | 320.00 | 19.08 | 339.08 |
| Delaware | 2 | 100.00 | [illegible] | [illegible] |
| [illegible] | 746 | 37,965.00 | 3,015.84 | 41,080.84 |

Pursuant to the provisions of the Pennsylvania weight limitation statute, notice of violation was sent to and the fine was imposed on the driver of the vehicle, the taxpayer's employee. Under the provisions of the statutes of the states other than Pennsylvania, the fine was imposed on the taxpayer as the owner of the overweight vehicles. (T. R. 128a.)

During and prior to the taxable year, the taxpayer had contracts in full force and effect with its driver-employees, represented by A. F. L. unions, under the terms of which the taxpayer was obligated to bear all costs in connection with the operation of overloaded equipment. In accordance with the contracts, the taxpayer paid all the fines imposed by the State of Pennsylvania in 1951 on its driver-employees for operating the overloaded equipment. Several other trucking organizations also followed this practice. The taxpayer's drivers, however, assumed the responsibility for any fines imposed for parking, speeding or driving violations, and paid those fines without reimbursement from the taxpayer. As between the taxpayer and its lessees, the fines incurred were payable solely by the taxpayer. The taxpayer had no arrangement with its lessees whereby it was to be reimbursed for the payment of the fines or any parts thereof. (T. R. 128a.)

*The Pennsylvania violations.* The taxpayer's vehicles made approximately 77,385 trips during the taxable year in and through Pennsylvania. During the summer months the vehicles were overweight on approximately 60 per cent of the trips; and during the winter months on approximately 75 per cent of

the trips. With its maximum 4,500 gallon tank filled to capacity, the taxpayer was able to carry only gasoline weighing 6 pounds a gallon, or a gross product weight of some 27,000 pounds, and remain within the legal weight limitations of 45,000 pounds, plus the 5 per cent leeway allowed by the Pennsylvania statute for equipment and product. During the summer months, the taxpayer carried gasoline on approximately 40 per cent of its trips. During the winter months, gasoline consumption by the public was reduced, and the carriage of domestic fuel and Bunker C oils constituted an increased portion of the taxpayer's business. The taxpayer's vehicles, when filled to capacity with domestic fuel or Bunker C oils (weighing 7 and 8 pounds a gallon, respectively), carried at least a product gross weight ranging from 31,500 pounds to 36,000 pounds, which, together with the unloaded weight of equipment of at least 20,000 pounds, exceeded the Pennsylvania maximum gross weight.[5] (T. R. 120a.)

[5] All the violations for which the taxpayer paid fines in Pennsylvania (and all the time that the taxpayer knew its equipment was being operated overloaded in Pennsylvania) related to the Pennsylvania 45,000 pound maximum gross weight, plus the 5 per cent leeway. Pennsylvania and the other states here involved also prescribed limitations on the axle weight per vehicle. However, unlike the situation with respect to a dry freight motor carrier, where the load could shift to or be built up disproportionately over one axle, bulk liquid equipment was so engineered that the liquid load was a constant weight over each axle. Hence, a bulk liquid motor carrier carrying a permissive maximum gross weight would only on rare occasions be in violation of an axle weight requirement, as, for example, where a particular truck tractor would not combine properly with a particular semi-trailer tank. (T. R. 121a.)

As a consequence of the practice to fill the tanks to capacity and operate equipment exceeding the maximum gross weight allowed by Pennsylvania law, the taxpayer and three of its lessees frequently had their vehicles stopped by the police during 1951, and had to pay fines for operating the overloaded equipment in Pennsylvania. They violated the Pennsylvania motor vehicle weight laws a substantial number of times in excess of the number of times their vehicles were stopped by the police and fines were imposed. The taxpayer's records indicated that approximately 60 per cent of the arrests were made by the Pennsylvania State Police, and the remaining 40 per cent by the police of the local Pennsylvania municipalities.[6] (T. R. 126a–127a, 128a.)

At the times that its vehicles were overloaded in the State of Pennsylvania, the taxpayer knew that it was exceeding the State's maximum gross weight provisions. It had such knowledge on the 711 trips on which fines were actually imposed. The taxpayer

[6] The following table shows the number and dollar amount of fines imposed upon and paid by all drivers in 1951 in Pennsylvania as a result of the enforcement by the Pennsylvania State Police of the Pennsylvania statute prescribing maximum gross weight for motor vehicles (the table does not reflect any enforcement activities by police of Pennsylvania municipalities or political subdivisions) (R. 127a):

| | |
|---|---|
| Number of vehicles stopped and weighed | 182,082 |
| Number of fines for vehicles over 5 per cent and less than 10 per cent overweight | 7,875 |
| Dollar amount of fines for vehicles over 5 per cent and less than 10 per cent overweight | $196,875 |
| Number of fines for vehicles over 10 per cent overweight | 20,540 |
| Dollar amount of fines for vehicles over 10 per cent overweight | $1,027,000 |
| Total number of fines | 28,415 |
| Total dollar amounts of fines | $1,223,875 |

took a calculated risk that its overweight vehicles would not be discovered on a percentage of the times that its vehicles exceeded the Pennsylvania weight limitations.[7] (T. R: 120a.)

None of the taxpayer's drivers was imprisoned or had his license suspended or was subjected to any sanction other than a fine for operating the taxpayer's vehicles overweight in Pennsylvania in 1951, and this was true for the employee-drivers of other carriers. No sanctions were imposed by the State of Pennsylvania on the taxpayer or other carriers in 1951 for operating the overloaded equipment, other than by way of the fines imposed on the driver-employees. Nor did the Pennsylvania authorities require the taxpayer to remove any excess load before its overweight motor vehicle was permitted to continue on the Pennsylvania highways. (T. R. 128a–129a.)

*The New Jersey violations.* Under the reciprocity provisions of the New Jersey statute, a motor vehicle

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[7] The taxpayer's practice of knowingly exceeding the Pennsylvania weight limitations in the operation of its vehicles was not confined to the taxable year 1951, but existed prior thereto. At the time of the taxpayer's incorporation on January 1, 1945, only single compartment tanks of no less than 4,500 gallon capacity were available, due to World War II restrictions relating to the conservation of steel and the attempt to have a uniform standardized size of tank for maximum utility which would comply generally with the weight restrictions of most of the states of the United States. It had been the uniform practice in the industry during the war years to fill the tanks to capacity and this practice continued unabated for the taxpayer and the other carriers during the taxable year. As previously noted, during the years of World War II and up to the latter part of 1950, the taxpayer's overweight vehicles were not stopped by the Pennsylvania authorities. (T. R. 123a, 129a.)

registered in another state, such as Pennsylvania, was restricted in its gross weight, in using the New Jersey highways, to the maximum gross weight allowed by the state where the vehicle was registered. Thus, the taxpayer's Pennsylvania licensed motor vehicles operating on the New Jersey highways, were restricted to the Pennsylvania maximum gross weight of 45,000 pounds, plus the 5 percent leeway, whereas the same equipment bearing a New Jersey license tag registration was allowed to use the highways of New Jersey, bearing a gross weight of 60,000 pounds. The taxpayer was fined a total of seven times by the New Jersey authorities for operating overweight equipment on the New Jersey highways. All of the fines pertained to carrying on the highways of that state a weight in excess of the 47,250 pounds allowed by Pennsylvania law, but less than the 60,000 pounds allowed by New Jersey law. On these seven trips (as well as on many other occasions on which the taxpayer's vehicles were not stopped by the police and, consequently, no fines were imposed) the taxpayer knew that it was operating vehicles in New Jersey at a weight exceeding that allowed by the Pennsylvania statute. (T. R. 121a–122a.)

*The violations of the statutes of the other states.* In the remaining states of Maryland, Ohio, West Virginia, and Delaware, the taxpayer paid a total of twenty-eight fines for operating overloaded vehicles exceeding the maximum weights prescribed by the statutes of the states in which the fines were imposed. At the times these twenty-eight trips took place, the taxpayer did not know that its vehicles were overloaded in any respect. Similarly, as to other trips in

those states, on which some of the taxpayer's vehicles were possibly overloaded, the taxpayer did not operate any of its vehicles with knowledge that the weight of the vehicle exceeded the maximum prescribed by law. In all of the aforementioned states, the taxpayer's operation of overloaded equipment, for which it was fined or not, was inadvertent and without the taxpayer's knowledge at the time of the trip. (T. R. 122a.)

Various factors could have caused and did cause the taxpayer's vehicles to exceed at times the maximum weight requirements of the various states without its fault or knowledge at the time of the trip, the principal factors being: (a) the nature of the loading process, whereby employees of the shipper, in order to assure customers of the shipper full measure at destination, filled the tanks beyond the maximum capacity consistent with the small 3 per cent tolerance for expansion in order to take care of possible shrinkage in transit; (b) changes in temperature during transit, whereby a vehicle, within legal weight limits at point of origin, could pick up snow and ice which would cling to the vehicle, causing it to be overweight en route; (c) loading by gallonage (the common practice, by reason of the fact that only a few of the refineries where the load originated used scales), coupled with residual variations in the weight per gallon of the product, in some cases a variance of one pound per gallon, so that reliance on average weight, which was the only measure feasible, was not accurate; and (d) improper combination of a particular

truck tractor and semi-trailer tank, so as to cause an axle overload. (T. R. 122a–123a.)

*Special permit provisions of the various statutes.* The Pennsylvania statute and the statutes of the other states herein involved contained provisions for obtaining from designated state authorities, for a fee, a permit for operating on the highways of the respective states motor vehicles bearing a weight in excess of the prescribed maximum. The fee for such a permit in Pennsylvania was $5 plus two cents per ton of 2,000 pounds overweight per mile. It was the policy of the State of Pennsylvania not to issue permits where material could be taken off the vehicle so as to reduce the gross weight thereof to 45,000 pounds. The industry practice, followed by the taxpayer, was not to seek permits for operating the equipment in excess of the maximum prescribed by the Pennsylvania statute. (T. R. 126a.)

*Accounting practice with respect to fines.* During 1951, the Interstate Commerce Commission prescribed a uniform system of accounting in the keeping of books and records and in the preparation of reports required to be filed with it by motor carriers subject to its jurisdiction. The Pennsylvania Public Utility Commission followed, adopted and interpreted accounting words and phrases, and prescribed that annual reports required to be submitted to it by motor carriers be prepared in accordance with the Uniform System of Accounts prescribed by the Interstate Commerce Commission. During the taxable year 1951, the taxpayer did not hold any operating certificate issued by the Interstate Commerce Com-

mission and/or by the Pennsylvania Public Utility Commission, and, accordingly, it was not required to, nor did it for the taxable year 1951, file any annual reports with either Commission. It was the practice in 1951 for motor carriers required to keep books and records for, and to file reports with, the Interstate Commerce Commission and/or the Pennsylvania Public Utility Commission, to include fines for operating motor vehicles in excess of the weight prescribed by state laws as an operating expense item in Account No. 4280 of the Uniform System of Accounts entitled "Other transportation expenses," under the listed category "Fines for traffic violations." The Interstate Commerce Commission periodically examined and reviewed the books, records and reports of motor carriers under its jurisdiction; for the year 1951 and for years prior thereto, no change or adjustment was made with respect to the reporting of the fines for violating the state weight laws in Account No. 4280. (T. R. 129a–130a.)

The Uniform System of Accounts made a distinction between operating revenue and operating expense on the one hand, and other revenue and other expense, on the other hand. It took items of operating expense into consideration for rate making purposes; it did not so consider items of non-operating expense. Penalties and fines for violations of law, except fines for traffic violations, were reported as a non-operating expense item in Account No. 7500 of the Uniform System of Accounts. (T. R. 130a.)

*The 1951 return.* The taxpayer filed a corporation income tax return for the calendar year 1951 and

included the amount of $41,060.84 (representing the total of $37,965 paid as fines, and $3,095.84 as costs) in the item of "Transportation Expense" in Schedule B—Cost of Operations. The Commissioner determined that the $41,060.84 did not constitute a deductible expense. (T. R. 119a, 130a.)

*The decisions below.* The Tax Court sustained the Commissioner's determination that the fines incurred and paid by the taxpayer in 1951 were not deductible business expenses. As to the Pennsylvania violations, the Tax Court held that the weight limitation statutes of that state were penal provisions, the purpose of which was to protect the highways and bridges of the state from damage and to insure the safety of persons traveling over them, and that to allow deductions for the fines paid would have the effect of mitigating the degree of punishment and of frustrating the purpose and effectiveness of those laws. As to the New Jersey violations, the Tax Court held that the violations were just as deliberate as the ones occurring in Pennsylvania itself, and that the fines and costs imposed by that state were similarly not deductible. As to the violations of the laws of Maryland, Ohio, West Virginia and Delaware, the Tax Court in substance held that although they were nonwillful, the statutes themselves placed all violators on the same basis without recognition of degrees or character of guilt, and that it would therefore frustrate the policy of the statutes if any distinction between innocent and willful violators should be made in applying the provisions of Section 23 (a) (1) (A) of the Internal Revenue Code of 1939. (T. R. 132a–135a.)

The Court of Appeals affirmed the decision of the Tax Court. (T. R. 141a.)

## SUMMARY OF ARGUMENT

### I

The taxpayers seek to deduct, as "ordinary and necessary" business expenses, fines paid for violating the maximum weight laws of various states. Those laws, reflecting state policies against the operation of overweight motor vehicles on the public highways, were enacted to protect highways from damage, and to insure the safety of the persons using them. Taxpayers, in urging that violations of state maximum weight laws were both "ordinary and necessary," stress their contentions that it was either not economically feasible to comply with such laws or that some violations were entirely unavoidable. These arguments are, in effect, an attack upon the wisdom and validity of the state statutes. If, in fact, compliance with the maximum weight laws was not feasible, taxpayers should have challenged the statutes directly in the appropriate state courts or legislatures. Taxpayers do not assert in this Court that the state statutes are unconstitutional or otherwise invalid and, of course, this Court will not review the wisdom of the state statutes or fail to give effect to them because of possible doubts as to the soundness of the policy they reflect.

Once the validity of the state statutes is recognized, it is clear that fines exacted for their violation should not be deductible as an "ordinary and necessary" business expense. The provisions imposing

fines, and in some instances possible jail sentences, for violations of the state maximum weight laws, were manifestly punitive and deterrent in purpose. They were penal provisions; and not, as the taxpayers contend, compensation or toll provisons masquerading as criminal statutes. Unlike compensation or toll, the fines were not paid for each use of the highway by an overloaded truck, but only when, in the exceptional case, the state enforcement officers detected such use. On the hypothesis, accepted by the trial and appellate courts in both these cases, that the provisions were penal, to allow deductions for the fines, and thereby to mitigate *pro tanto* the effect of the sanctions, "would frustrate the sharply defined policies" proscribing the "particular types of conduct" spelled out in the maximum weight laws. Such frustration is particularly evident where, as the *Tank Truck* case discloses, there was an industry-wide determination that it would be more economical to violate than to comply with the state laws. This determination was obviously based on a balancing of the costs of compliance against the amount of the fines imposed and the likelihood of the violation being detected. To the extent that tax deductions are permitted where fines are imposed, the economic attractiveness of noncompliance is increased and the states are hampered in furthering the public policy declared by their legislatures. The deductions were, therefore, properly denied. As this Court has indicated, and as the lower federal courts have many times held in a variety of circumstances, expenditures which are themselves illegal or which, as in the instant case, are a direct

consequence of a violation of state law, are not "ordinary and necessary" business expenses within the meaning of Section 23 (a) (1) (A).

II

The other arguments advanced in favor of deductibility are equally without merit.

A. In determining whether the fines were "ordinary and necessary" business expenses, no distinction should be drawn here between the willful violations, on the one hand, and the nonwillful or so-called unavoidable violations, on the other. The fines resulting from either are equally nondeductible, despite the taxpayers' contentions that a different rule should apply in the case of the fines resulting from the nonwillful violations. As the courts below agreed in both cases, the state policy, as reflected in the maximum weight laws, was to place all violators on the same basis without recognizing degrees or character of guilt. It follows, therefore, that if the taxpayers were relieved of the consequences of their nonwillful violations, the policies of the states would be frustrated just as much as if the violations had been willful.

The OPA cases relied upon by the taxpayers are not relevant here since the fundamental policy of the Emergency Price Control legislation was to distinguish between willful and nonwillful violators. Further, the OPA exaction was civil in nature, as contrasted with the criminal character of the fines here involved.

B. The legislative history of Section 11 (A) and (G) (b) of the Income Tax Act of 1913, and Congress' failure in 1951 to adopt Senator Kefauver's proposal not to allow any deductions incurred in illegal wagering, do not demonstrate, as the taxpayers assert, Congressional intent in 1939 to allow deductions for expenditures either in themselves illegal, or, as in the instant cases, resulting as a direct consequence of illegal conduct in the carrying on of lawful enterprises. The intent of Congress to tax income regardless of source does not diminish its explicit requirement that in determining net income only those expenses which are "ordinary and necessary" may be deducted from gross income; and fines paid for violating state penal statutes are not "ordinary and necessary." In any event, the Kefauver proposal did not deal with the limited issue involved in the instant cases; it was in effect a package proposal which, in addition to the recommendation for the denial of all deductions in carrying on illegal wagering, included a number of other measures directed at wagering houses, relating to the keeping of records, the filing of net worth statements, etc.

C. In arguing that the economic relationship of the fines to the trucking industry is a controlling factor in determining deductibility, the taxpayers in effect have adopted the so-called "integrality" test of the Seventh Circuit, underlying its decisions in *Commissioner* v. *Sullivan, Ross and Mesi* (No. 119, this Term). But any criterion which would permit deductions for expenditures simply because they are alleged to be economically an integral part of a business, even though the expenditures may be crimes in themselves

(as in the Seventh Circuit cases) or, as here, the direct consequences of the violation of state laws, is not only unrealistic and unworkable; it is irreconcilable with the many decisions construing Section 23 (a) (1) (A) as precluding the deduction of expenses where the effect would be to frustrate public policy; in such circumstances, the expenses cannot be regarded as "ordinary and necessary."

## ARGUMENT

### I

### THE FINES IMPOSED UNDER THE PENAL PROVISIONS OF THE VARIOUS STATE MAXIMUM WEIGHT LAWS WERE NOT DEDUCTIBLE FROM GROSS INCOME AS ORDINARY AND NECESSARY BUSINESS EXPENSES

The question presented by these cases, whether fines paid by the taxpayer motor vehicle carriers for violating the maximum weight laws of the respective states in which they operated may be deducted from gross income as "ordinary and necessary" business expenses, within the meaning of Section 23 (a) (1) (A) of the Internal Revenue Code of 1939,[8] Appendix, *infra*, p. 65, is one which has been anticipated by this Court.

In *Commissioner* v. *Heininger*, 320 U. S. 467, 473-474, this Court suggested a rule of nondeductibility in those situations in which the allowance of a deduction "would frustrate the sharply defined policies" by which the federal or state governments proscribed "particular types of conduct", and in *Lilly* v. *Com-*

[8] The cases arise under the 1939 Code. The issue is of continuing importance, however, since Section 162 (a) of the 1954 Code contains similar language.

*missioner*, 343 U. S. 90, 97, the Court further noted that "The policies frustrated must be national or state policies evidenced by some governmental declaration of them." In the *Heininger* case, this Court took cognizance of the fact that (p. 473) "The Bureau of Internal Revenue, the Board of Tax Appeals, and the federal courts have from time to time * * * narrowed the generally accepted meaning of the language used in § 23 (a)" on public policy grounds, and, more specifically, that "Where a taxpayer has violated a federal or a state statute and incurred a fine or penalty he has not been permitted a tax deduction for its payment." In the *Lilly* case, hypothesizing the factual situation presented by the instant cases, and referring explicitly (fn. 6) to federal decisions disallowing deductions to cover penalties for unlawful conduct (pp. 94–95) this Court observed:

> We do not have before us the issue that would be presented by expenditures which themselves violated a federal or state law *or were incidental to such violations*. In such a case it could be argued that the * * * expenditures * * * were not "ordinary and necessary" business expenses within the meaning of § 23 (a) (1) (A). [Emphasis supplied.]

A. IN GENERAL: THE PUBLIC POLICY RULE

Section 23 (a) (1) (A) does not authorize the deduction of every alleged business expense incurred or paid during the taxable year; the expense must be "ordinary and necessary." The phrase is in the conjunctive, and both requirements must be satisfied. *Deputy* v. *duPont*, 308 U. S. 488, 497; *Welch* v. *Hel-*

*ivering*, 290 U. S. 111, 113. Expenditures are not deductible simply because they are made *in connection with* an income-producing activity. *Welch* v. *Helvering, supra*; *Great Northern Ry. Co.* v. *Commissioner*, 40 F. 2d 372, 373 (C. A. 8th), certiorari denied, 282 U. S. 855; see also *Clarke* v. *Haberle Brewing Co.*, 280 U. S. 384, 386–387, and *Reinecke* v. *Lucas*, 280 U. S. 387.

In *Textile Mills Corp.* v. *Commissioner*, 314 U. S. 326, this Court stated (p. 338): "The words 'ordinary and necessary' are not so clear and unambiguous in their meaning and application as to leave no room for an interpretative regulation." In upholding the validity of a regulation defining those terms as excluding certain types of lobbying expenses, this Court observed that the line drawn in *Textile Mills* between permissible and nonpermissible deductions (p. 339) "certainly does no violence to the statutory language." But the drawing of such a line is not exclusively an administrative function, for, as this Court noted in the *Heininger* and *Lilly* cases, *supra*, the lower courts—in many decisions which have applied the principles stated in *Textile Mills*, but which have not rested upon the language of any regulation—have held that, "as a matter of law" (*Lilly* v. *Commissioner, supra*, 343 U. S. at 97), expenditures are not to be treated as "ordinary and necessary" in the statutory context where to do so would frustrate federal or state public policy.

In urging that it was "ordinary and necessary" to violate the state maximum weight laws, taxpayers

stress their contentions that it was either not economically feasible to comply with such laws or that some violations were entirely unavoidable. These arguments are, in effect, an attack upon the wisdom of the state statutes. If, in fact, compliance with the maximum weight laws was not feasible, taxpayers, either directly, or where the fines were imposed upon the drivers, through their employees, should have challenged the statutes directly in the appropriate state courts or legislatures. Taxpayers do not assert in this Court that the state statutes are in any way unconstitutional or otherwise invalid. Clearly, this court should not pass judgment on the wisdom of the state statutes, or to any extent, reduce their effectiveness because of possible doubts as to the soundness of the policy they reflect, or the manner in which they are enforced (see *infra*, p. 50), especially where the issue is involved collaterally as it is here. And, once the validity of the state statutes is recognized, it should follow, in the light of the past cases and sound reason, that fines exacted for violation of the statutes should not be allowed as a federal tax deduction.

The concept that the deductibility of business expenses is subject to an overriding public policy limitation has been applied in a variety of circumstances; indeed, so extensively as to cause this Court to comment that "A review of the situations which have been held to belong in this category would serve no useful purpose for each case should depend upon its peculiar circumstances." *Commissioner* v. *Heininger, supra,*

320 U. S. at 473." The cases fall into several related and often overlapping groups.[9] They are discussed at some length at pages 19 through 26 of the Government's brief in the *Sullivan, Ross and Mesi* case, *supra*. Except with respect to the cases falling in the major category with which we are here concerned—in which deductions were denied for the payment of fines resulting from the violation of federal and state statutes—that discussion will not be repeated here *in extenso*. By way of summary, however, we note that the cases in the remaining categories comprise (1) those in which "A taxpayer who has been prosecuted under a federal or state statute and convicted of a crime has not been permitted a tax reduction for his attorney's fee" (*Commissioner* v. *Heininger, supra*, p. 473, fn. 8), a result reached by "the clearest analogy" to the cases holding that fines and penalties paid for the commission of unlawful acts are not deductible as ordinary and necessary expenses (*Levinstein* v. *Commis-*

[9] For a collection and analysis of many of the cases, see 4 Mertens, *Law of Federal Income Taxation* (Rev.), Sections 25.131–25.135; Paul, *The Use of Public Policy by the Commissioner in Disallowing Deductions*, So. Cal. Tax Institut. (1954), p. 715; Lurie, *Deductibility of "Illegal" Expenses*, Eleventh Annual N. Y. U. Institute on Federal Taxation (1952), p. 1189; Schwartz, *Business Expenses Contrary to Public Policy: An Evaluation of the Lilly Case*, 8 Tax L. Rev. 241 (January, 1953); Brookes, *Litigation Expenses and the Income Tax*, 12 Tax L. Rev. 241, 263–273 (March, 1957); Note 27 A. L. R. 2d 503.

[10] See the categories suggested in 4 Mertens, *Law of Federal Income Taxation*, *supra*, Section 25.131, p. 276, and Schwartz, *Business Expenses Contrary to Public Policy: An Evaluation of the Lilly Case*, *supra*, p. 242.

*sioner*, 19 B. T. A. 99, 104–105;[11] (2) cases in which deductions have been denied for excessive wages paid

[11] See also, *Estate of Thompson* v. *Commissioner*, 21 B. T. A. 568, appeal dismissed, 62 F. 2d 1082 (C. A. 8th); *Burroughs Bldg. Material Co.* v. *Commissioner*, 47 F. 2d 178 (C. A. 2d); *Backer* v. *Commissioner*, 1 B. T. A. 214; *Lindheim* v. *Commissioner*, 2 B. T. A. 229; *Wolf Manufacturing Co.* v. *Commissioner*, 10 B. T. A. 1161; *Atlantic Terra Cotta Co.* v. *Commissioner*, 13 B. T. A. 1289; *Sanitary Earthenware Specialty Co.* v. *Commissioner*, 19 B. T. A. 641; *Estate of MacCrone* v. *Commissioner*, decided August 26, 1955 (1955 P-H T. C. Memorandum Decisions, par. 55,238, vacated and remanded, 240 F. 2d 841 (C. A. 3d); *Stralla* v. *Commissioner*, 9 T. C. 801; *Thomas* v. *Commissioner*, 16 T. C. 1417; *Joseph* v. *Commissioner*, 26 T. C. 562; *Union Packing Co.* v. *Commissioner*, decided November 22, 1955 (1955 P-H T. C. Memorandum Decisions, par. 55,308); *Commissioner* v. *Longhorn Portland Cem. Co.*, 148 F. 2d 276 (C. A. 5th), certiorari denied, 326 U. S. 728; *Commissioner* v. *Schwegetz*, 232 F. 2d 94 (C. A. 5th).

As to the contention (*Tank Truck*, Br. 14, 32–34) that some judicial and administrative confusion exists in this area, two observations are pertinent. (1) Although neither the judicial nor administrative practice may have been uniformly consistent in the application of the principle that Section 23 (a) (1) (A) does not permit the deduction of various expenditures as "ordinary and necessary" where to do so would frustrate sharply defined public policies, the existence of the principle cannot be doubted. (2) In any event, as recently stated in *Commissioner* v. *Schwartz*, *supra*, p. 99 (C. A. 5th): "It seems to be accepted that fees paid to attorneys in an unsuccessful defense of a criminal prosecution are not deductible", and this Court's opinion in *Commissioner* v. *Heininger*, *supra*, does not indicate any contrary view. There, in holding that attorneys' fees paid in an unsuccessful attempt to enjoin a fraud order of the Postmaster General barring Heininger's advertising matter from the mails, were deductible, this Court significantly stated that the (p. 474) "single policy" of the mail fraud provisions involved was "to protect the public from fraudulent practices committed through the use of the mails" and that it was not "their policy to deter persons accused of violating their terms from employing counsel to assist

in violation of certain federal legislation and Regulations thereunder; [12] (3) cases in which deductions were denied for payments made by corporate officers or directors to their companies in reimbursement of profits realized under circumstances defined by Section 16 (b) of the Securities Exchange Act of 1934, c. 404,

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in presenting a bona fide defense to a proposed fraud order." This Court accordingly concluded that "to allow the deduction of respondent's litigation expenses would not frustrate the policy of these statutes * * *." But, as we shall observe more fully below, since the various maximum weight laws in the instant cases were penal provisions, with underlying punitive and deterrent purposes, allowance of deductions for the fines paid would frustrate the public policies which those laws reflected.

[12] See *Pedone* v. *United States*, 151 F. Supp. 288 (C. Cls.), certiorari denied, October 14, 1957; *Solon Decorating Co.* v. *Commissioner*, decided February 28, 1957 (1957 P-H T. C. Memorandum Decisions, par. 57,035); *Zekman* v. *Commissioner*, 27 T. C. 876 (involving denial of deductions for wage payments made in violation of the Defense Production Act of 1950); *Weather-Seal Mfg. Co.* v. *Commissioner*, 16 T. C. 1312, affirmed, *per curiam*, 199 F. 2d 376 (C. A. 6th); *N. A. Woodworth Co.* v. *Kavanaugh*, 102 F. Supp. 9 (E. D. Mich.), affirmed, *per curiam*, 202 F. 2d 154 (C. A. 6th); *Binder* v. *Commissioner*, decided May 27, 1953 (1953 P-H T. C. Memorandum Decisions, par. 53,183); *Gilmore* v. *United States*, 131 F. Supp. 581 (N. D. Cal.) (denial of deductions for wages paid in violation of the Stabilization Act of 1942). The Court's statement in the *Pedone* case, *supra*, in sustaining the Government's denial of a deduction for "payments made in violation of law or public policy", is pertinent here (p. 292):

> If it [the Government] could not do so [deny the deduction], it would find itself in the position of subsidizing the violation of its law or public policy, since a percentage of the improper payment, depending on the tax bracket of the taxpayer, would be recovered by him in the form of a reduction of his income tax.

48 Stat. 881;[11] (4) cases in which deductions were denied for bribes, for payments made in response to commercial extortion,[12] and for "commissions" paid for the use of personal influence in obtaining public contracts;[13] and (5) cases involving a denial of deductions for other miscellaneous expenditures.[14] As already noted, this Court has refused to permit any

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[11] *Davis* v. *Commissioner*, 17 T. C. 549; *Dempsey* v. *Commissioner*, decided September 28, 1951 (1951 P-H T. C. Memorandum Decisions, par. 51,281); *Lehman* v. *Commissioner*, 25 T. C. 629.

[12] *Clark* v. *Commissioner*, 19 T. C. 48; *Lorraine Corp* v. *Commissioner*, 33 B. T. A. 1158; *Newman* v. *Commissioner*, decided August 29, 1952 (1952 P-H T. C. Memorandum Decisions, par. 52,267); *Maddas* v. *Commissioner*, 40 B. T. A. 572, affirmed, 144 F. 2d 548 (C. A. 3d); *Kelley-Dempsey & Co.* v. *Commissioner*, 31 B. T. A. 351; *Reliable Milk & Cream Co.* v. *Commissioner*, decided August 20, 1938 (1938 P-H B. T. A. Memorandum Decisions, par. 38,290); cf. *United States* v. *Sullivan*, 274 U. S. 259, 264.

[13] *Harden M. Loan Co.* v. *Commissioner*, 137 F. 2d 282 (C. A. 10th); *Rogel* v. *Commissioner*, 127 F. 2d 393 (C. A. 8th); *Easton Tractor & Equipment Co.* v. *Commissioner*, 35 B. T. A. 189; *Nicholson* v. *Commissioner*, 38 B. T. A. 190; *Finley* v. *Commissioner*, 27 T. C. 413.

[14] See, e. g., *Giubbini* v. *Commissioner*, decided October 27, 1939 (1939 P-H B. T. A. Memorandum Decisions, par. 39,471); *Estate of Karger* v. *Commissioner*, decided July 13, 1954 (1954 P-H T. C. Memorandum Decisions, par. 54,204) (denial of deductions for payments made by abortionists to procurers and assistants); *Fazzio* v. *Commissioner*, decided September 7, 1943 (1943 P-H T. C. Memorandum Decisions, par. 43,410) (denial of deduction for fees paid for membership identification tags on pinball machines where the purpose of the association was illegal); *Finley* v. *Commissioner*, *supra* (deduction denied for payments for whiskey used for entertainment purposes by a legitimate business where it was unlawful under state law to purchase, give away, or furnish alcoholic beverages).

deduction for lobbying expenses incurred in order to procure legislation. *Textile Mills Corp.* v. *Commissioner*,[17] *supra*. Although the nondeductibility of that type of expenditure has been covered by successive Treasury Regulations,[18] this Court's decision in *Textile Mills* is nevertheless relevant here, since it necessarily recognizes that considerations of public policy are properly taken into account in construing Section 23 (a) (1) (A), a conclusion strongly fortified by this Court's subsequent observations in the *Heininger* and *Lilly* cases.[19]

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[17] See also, *Sunset Scavenger Co.* v. *Commissioner*, 84 F. 2d 453 (C. A. 9th); *American Hardware & Eq. Co.* v. *Commissioner*, 202 F. 2d 126 (C. A. 4th); *Roberts Dairy Co.* v. *Commissioner*, 195 F. 2d 948 (C. A. 8th), certiorari denied, 344 U. S. 865; *McClintock-Trunkey Co.* v. *Commissioner*, 19 T. C. 297, reversed on other grounds, 217 F. 2d 329 (C. A. 9th); *Mosby Hotel Co.* v. *Commissioner*, decided October 22, 1954 (1954 P-H T. C. Memorandum Decisions, par. 54,288); *Revere Racing Assn.* v. *Scanlon*, 137 F. Supp. 293 (D. Mass.); *Cammarano* v. *United States*, 246 F. 2d 751 (C. A. 9th).

[18] Treasury Regulations 118, promulgated under the Internal Revenue Code of 1939, Sections 39.23 (o)-1 (f) and 39.23 (q)-1 (a); Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939, Sections 29.23 (o)-1 and 29.23 (q)-1; Treasury Regulations 103, promulgated under the Internal Revenue Code of 1939, Sections 19.23 (o)-1 and 19.23 (q)-1. For prior administrative provisions, see *Textile Mills Corp.* v. *Commissioner*, *supra*, 314 U. S. at 337-338.

[19] Tax benefits, other than deductions for "ordinary and necessary" expenses under Section 23 (a) (1) (A), have been denied on considerations of public policy. See, *e. g.*, *Turnipseed* v. *Commissioner*, 27 T. C. 758 (dependency exemption under Sections 151 (e) (1) and 152 (a) (9) of the Internal Revenue Code of 1954 denied for a member of the taxpayer's household with whom he lived in adultery, in violation of the laws of the State of Alabama); *United States* v. *Algemene Kunstzijde Unie, N. V.*, 226 F. 2d 115 (C. A. 4th), certiorari denied, 350

The cases in the category with which we are here directly concerned were decided over a substantial period of time, and cover a variety of factual situations. *E. g., Bonnie Bros., Inc.* v. *Commissioner,* 15 B. T. A. 1231 (fine for violating federal laws regulating the interstate shipment of intoxicating liquors); *Kansas City Southern Ry. Co.* v. *Commissioner,* 22 B. T. A. 949 (penalties for violating federal statutes); *Achelis* v. *Commissioner,* 28 B. T. A. 244 (state penalty tax); *Davenshire, Inc.* v. *Commissioner,* 12 T. C. 958 ("liquidated damages" for child labor violations); *Boyle, Flagg & Seaman, Inc.* v. *Commissioner,* 25 T. C. 43 (payments in violation of state insurance laws); *Great Northern Ry. Co.* v. *Commissioner, supra,* and *Terminal Railroad Assn. of St. Louis* v. *Commissioner,* 17 B. T. A. 1135, affirmed, *sub nom. Tunnel R. R.* v. *Commissioner,* 61 F. 2d 166 (C. A. 8th), certiorari denied, 288 U. S. 604 (penalties for violating federal statutes pertaining to the operation of railroads); *Burroughs Bldg. Material Co.* v. *Commissioner, supra* (fines for violating state price-fixing laws); *United States* v. *Jaffray,* 97 F. 2d 488 (C. A. 8th), affirmed on other issues, *sub nom. United States* v. *Bertelsen & Petersen Co.,* 306 U. S. 276 (penalty for

U. S. 969 (deduction under Section 23 (f) of the Internal Revenue Code of 1939 denied to a foreign corporation doing business in this country for loss incurred when certain of its assets were vested by the United States under the Trading with the Enemy Act); and *Fuller* v. *Commissioner,* 213 F. 2d 102 (C. A. 10th), (deduction under Section 23 (e) of the Internal Revenue Code of 1939 denied for loss incurred when whiskey, being sold in a dry state, was confiscated by law enforcement officers).

negligent understatement of taxes); *Standard Oil Co. v. Commissioner*, 129 F. 2d 363 (C. A. 7th), certiorari denied, 317 U. S. 688 (damages paid to the Federal Government for illegal conversion of oil lands brought about by corruption (bribery)); *Helvering v. Superior Wines & Liquors*, 134 F. 2d 373 (C. A. 8th) (amounts paid in compromise of liabilities for violating federal taxing statutes); *Commissioner* v. *Longhorn Portland Cem. Co., supra*, and *Universal Atlas Cement Co.* v. *Commissioner*, 9 T. C. 971, affirmed, *per curiam*, 171 F. 2d 294 (C. A. 2d), certiorari denied, 336 U. S. 962 (amounts paid in compromise of penalties for alleged violation of state anti-trust laws); *Lentia* v. *Commissioner*, 226 F. 2d 695 (C. A. 7th), certiorari denied, 350 U. S. 934; *Henry Watterson Hotel Co.* v. *Commissioner*, 15 T. C. 902, affirmed, *per curiam*, 194 F. 2d 539 (C. A. 6th); *Garibaldi & Cuneo* v. *Commissioner*, 9 T. C. 446; and *New Orleans Motor Co.* v. *Commissioner*, decided June 30, 1949 (P-H T. C. Memorandum Decisions, par. 49,173) (payments to the United States for overcharges made in violation of the Emergency Price Control Act of 1942).

The "real reason" why the courts have denied deductions in these cases is not—as the taxpayer in *Tank Truck* suggests (Br. 52, 55, 60–61)—that the fines and penalties paid were *characterized* as such in the statutes involved, "but because allowance * * * would be against public policy." *National Brass Works* v. *Commissioner*, 182 F. 2d 526, 530 (C. A. 9th). Where a state collects a fine or penalty imposed for wrongdoing, the policy reflected in the

statute imposing the sanctions is manifestly frustrated where a wrongdoer is allowed to deduct the penalty as a business expense. A state imposes and collects fines and penalties in order to make real its threat to punish those who violate its laws, thereby to deter other possible offenders. To the extent that the impact of punishment is diluted by the allowance of a tax deduction, the punitive and deterrent effects are thwarted. As stated in *Commissioner* v. *Longhorn Portland Cem. Co., supra*, p. 277.

> The sense of the rule that statutory penalties are not deductible from gross income is that the penalty is a punishment inflicted by the state upon those who commit acts violative of the fixed public policy of the sovereign, wherefore to permit the violator to gain a tax advantage through deducting the amount of the penalty as a business expense, and thus to mitigate the degree of his punishment, would frustrate the purpose and effectiveness of that public policy.

This consideration has special force where, as the *Tank Truck* case demonstrates, there has been an industry-wide determination that it is financially more attractive to violate the law, and pay the fines when detected, than to comply with the law.[20] To the extent that the fines exacted by the state in an attempt

[20] In this connection it is significant that the findings in *Tank Truck* of the serious competitive disadvantages, within the trucking industry, of compliance, are based on the assumptions that other truckers would also continue to violate the law and that if compliance, in fact, proved disastrous to the industry, the statutory changes which were enacted in Pennsylvania in 1955 would not have come at an earlier date.

to force compliance are allowed as federal tax deductions, the economic attractiveness of non-compliance is increased and the likelihood that truckers will continue deliberately to violate the law is also increased. Thus, especially where the economic risks of compliance as opposed to non-compliance are a key factor in the determination whether to accede to or resist the laws of the state, would it frustrate state policy to permit the state fines to be taken as a federal tax deduction.

B. THE PENAL CHARACTER OF THE MAXIMUM WEIGHT LAWS

Contrary to the taxpayers' contentions (*Tank Truck* Br. 51–65; *Hoover* Br. 9), the state laws here involved—all of which imposed fines for violations, some of which provided for possible jail sentences—were penal in nature, not "clearly remedial." Both lower courts and the Courts of Appeals so agreed. In the *Hoover* case, the District Court concluded (H. R. 13):

> There can be no doubt that the underlying policy of the laws under which the fines were paid is not only to protect the highways of the state but also to protect the persons using them. Violations of the statutes are punishable by the imposition of a fine which is penal in character.

The Court of Appeals for the Sixth Circuit explicitly concurred with that view. (H. R. 19.) In the *Tank Truck* case, the Tax Court found that the purpose of

the Pennsylvania weight limitation laws in effect in 1951[21] (T. R. 132a):

> was to protect the highways and bridges from damage and to insure the safety of persons traveling over them. * * * They were not remedial laws having as their purpose the recovery of damage to the highways or bridges even though, as petitioner points out in its brief, they provided that the fines and penalties collected be used for the construction, repair and maintenance of highways. * * * They were "penal" laws, * * * and were enacted to enforce obedience to prescribed weight limitations and to punish violators.

The Court of Appeals agreed, stating (T. R. 140):

> The weight limit law [of Pennsylvania] is not to be considered a mere revenue measure, as petitioner suggests, simply because the fines collected are assigned to road repair. It has been held by this court that the disputed law is for the protection of the citizenry of Pennsylvania as well as the public roads.

Analysis of the various state laws here involved confirms the unanimous conclusion of the courts below that those laws were penal in character. They employ the conventional phraseology of criminal statutes. In general, the violations are designated as "misdemeanors". Upon "conviction", violators are

[21] More than 95% of the fines paid in the *Tank Truck* case were for violations of the Pennsylvania maximum weight laws. (T. R. 119a.)

subjected to "fines" and possible "sentences" of "imprisonment", and, in one instance, "to hard labor".

For example, Section 453 of the Pennsylvania Vehicle Code (Appendix, *infra*, p. 107), as it read in 1951, expressly prohibited the operation of motor vehicles on the highways at gross weights exceeding 45,000 pounds; and also provided for certain maximum axle and wheel loads. In phraseology ordinarily found in criminal statutes, the Code provided that "upon summary conviction before a magistrate", operators who exceeded the weight limit by more than 5% but less than 10% were to be "sentenced to pay a fine" of $25 and costs, or, in default thereof, were to be imprisoned for not more than 5 days. Offenders exceeding the limit by more than 10% were, upon conviction, subject to a fine of $50 and costs, or, in default of payment, to imprisonment for not more than 10 days. The Pennsylvania courts have construed this type of statute as penal. *Commonwealth* v. *Hallberg*, 374 Pa. 554; *Commonwealth* v. *Burall*, 146 Pa. Super. 525. And the Court of Appeals for the Third Circuit has clearly indicated the motivation for the enactment of its provisions was a serious concern for the safety of the public, not the collection of revenue. In *McDonald* v. *Pennsylvania R. Co.*, 210 F. 2d 524, 528, the court stated:

> The Vehicle Code does not state expressly why an overweight vehicle is prohibited from movement on a Pennsylvania highway without a permit. There are, however, two obvious reasons. The first is that an overweight vehicle may work serious damage to a road and the

> statute authorizes the Department of Highways to control the movement of heavy equipment to keep damage to a minimum. The second is that overweight vehicles are an obstacle to the free movement of traffic, thereby creating traffic hazards. The Pennsylvania permit system is reasonably designed to keep large equipment off busy highways, narrow streets or grade crossings.

The interpretation given the Pennsylvania statutes by its own courts, as well as by the Court of Appeals for the Third Circuit, should be accepted by this Court. *Perkins* v. *United States*, 99 F. 2d 255, 258 (C. A. 3d); *Fox* v. *Rothensies*, 115 F. 2d 42, 44 (C. A. 3d). See *Erie R. Co.* v. *Tompkins*, 304 U. S. 64.

A summary of the penal provisions of the other state statutes appears in the footnote.[22]

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[22] *Alabama.* Sections 83 and 89 (d) of the Alabama Code (Appendix, *infra*, p. 67) prohibited gross loads exceeding 20,000 pounds upon county roads, and 30,000 pounds elsewhere. It also contained certain wheel and axle load limitations. It further provided that any violation of the maximum weight laws "shall constitute a misdemeanor" and that upon "conviction" the operator of the offending vehicle shall be "fined not less than one hundred dollars nor more than five hundred dollars, and may also be imprisoned or sentenced to hard labor * * * for not less than thirty days nor more than sixty days."

*Delaware.* Sections 4501, 4503 and 4507 of the Delaware Code, Appendix, *infra*, pp. 69–72, 73) permitted maximum gross weights ranging from 22,000 pounds to 60,000 pounds, and also contained certain axle load limitations. Anyone who violated its provisions was subject, for the first offense, to "be fined not less than $10 nor more than $100, or imprisoned not less than 10 nor more than 30 days, or both." For subsequent offenses, the statute provided that the offender "be fined not less than $50 nor more than $200, or imprisoned not less than 15 nor more than 30 days, or both."

We submit that, as both courts below in effect agreed, the substantive provisions of all of the pertinent state statutes leave (H. R. 13) "no doubt" that their "underlying policy * * * [was] not only to protect

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*Georgia.* Sections 68-405 (b) and (c) and 68-9921 of the Georgia Code (Appendix, *infra*, pp. 73-74, 75), setting forth certain specific wheel and axle loads, and providing a formula for determining permissible total gross weight, made the violation of any of its provisions a "misdemeanor", punishable as such.

*Illinois.* Sections 85.003 (1) and (2) and 85.065 of the Illinois Statutes (Appendix, *infra*, pp. 75-76, 77-78) permitted a maximum axle weight of 16,000 pounds and a maximum gross weight of 10,000 pounds. A first offender, "upon conviction", could be fined a maximum of $100. A second offense called for a maximum fine of $200, and for possible revocation of certificate or license for three months. For subsequent violations the certificate or license could be revoked for six months. Anyone who operated a vehicle despite such revocation was to "be deemed guilty of a misdemeanor and on conviction * * * fined in a sum not to exceed two hundred dollars, or imprisonment in the county jail for a period not exceeding thirty (30) days, or both, in the discretion of the court."

*Indiana.* Section 1 of the Indiana Acts of 1953 (Appendix, *infra*, pp. 81-83), permitting a total maximum gross of 72,000 pounds and providing for certain maximum axle and wheel loads, made the violation of its provisions a misdemeanor, subject to fine, the amount of which depended upon the degree of overweight. It also provided that:

> When a person is apprehended operating * * * a vehicle * * * in excess of the limitations * * * said vehicle or combination of vehicles shall be impounded * * * and * * * shall * * * be kept impounded until its weight is so reduced as to comply with the limitations * * * and until all fines and costs * * * are paid or stayed, and any person so apprehended who shall move said vehicle * * * after the same is impounded * * *, other than as expressly directed by said officer, shall be subject to be charged with a felony and upon conviction shall be subject to a fine of not less than $500 nor more than $1,000 to which may be added imprisonment in the Indiana State Reformatory or State

the highways of the state but also to protect the persons using them", and that the fines imposed for violations

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Prison for a period of not less than one nor more than five years.

*Kentucky.* Sections 189.221 (4), 189.222 (3), 189.226, 189.670 and 189.990 (2) (a) nd (b) of the Kentucky Revised Statutes (Appendix, *infra*, pp. 83–84, 85–86) provided for a maximum gross weight of 42,000 pounds, and for certain maximum axle and tire loads. They explicitly declared the public policy of the state (Sec. 189.670)—

> to be * * * that heavy motor trucks, alone or in combination with other vehicles, increase the cost of highway construction, and maintenance, interfere with and limit the use of highways for normal traffic thereon, and endanger the safety and lives of the traveling public, and that the regulations embodied in this chapter with respect to motor trucks, semi-trailer trucks and semi-trailers are necessary to achieve economy in highway costs, and to permit the highways to be used freely and safely by the traveling public.

They further provided that anyone violating the maximum weight provisions "shall be guilty of a misdemeanor, and upon conviction thereof shall be fined" certain graduated amounts, not exceeding $500, depending upon the excess weight carried. Sec. 189.990 (2) (a).

*Maryland.* By statutory formula the Maryland law (Art. 66½, Sec. 278; Appendix, *infra*, pp. 86–96) permitted a maximum gross weight of 65,000 pounds, and also provided for certain maximum axle loads. Upon conviction before a trial magistrate for violation of any of its provisions, a fine could be imposed, graduated to the amount of the excess weight carried, which the trial magistrate could not suspend or reduce. Refusal to stop for weighing upon direction by an authorized officer subjected the driver of a vehicle to a fine of $1,000, and the statute provided that (Sec. 278 (k)) "The Trial Magistrate finding a driver guilty of violating this section shall not have power to suspend the fine or imprisonment." Appeals from convictions for violation of the weight laws, in which the cases were heard *de novo*, could be taken (Sec. 278 (l)) "to the Court of Criminal Jurisdiction of any County in the trial is in the

of the weight laws were "penal in character." As the Court of Appeals in *Tank Truck* concluded (T. R. 141):

> * * * the state statutes involved are as said in *Commissioner* v. *Heininger*, * * * the creation of "sharply defined state * * * policies"; * * * they are "state policies evidenced by some governmental declaration of them." *Lilly* v. *Commissioner* * * *. *The Court that fashioned those phrases could not have had in mind a more typical example than motor vehicle laws.* [Emphasis supplied.]

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County, or the Criminal Court of Baltimore City (if tried in Baltimore City * * *."

*Mississippi.* Sections 8264 (a), 8270, 8271 (a) and (b) and 8272 of the Mississippi Code (Appendix, *infra*, pp. 90-92, 93-94), providing for certain maximum wheel and axle loads, and for a maximum gross vehicle weight of 30,000 pounds, made the violation of its provisions a misdemeanor, punishable (Sec. 8273 (b)

> for first conviction * * * by a fine of not more than $100.00 or by imprisonment for not more than ten days; for a second such conviction within one year thereafter * * * by a fine of not more than $200.00 or by imprisonment for not more than twenty days or by both such fine and imprisonment; upon a third or subsequent conviction within one year after the first conviction * * * by a fine of not more than $500.00 or by imprisonment for not more than six months or by both such fine and imprisonment.

*Missouri.* Sections 304.180 (1) and 304.190 of the Missouri Revised Statutes, and Section 1 of the Act of March 24, 1952 (Appendix, *infra*, pp. 94-96, 97-100), provided a formula for determining maximum permissible gross weights for motor vehicles or combinations, permitted certain specific maximum axle and wheel loads, and provided for certain specific maximum gross weights of vehicles operating within, or within two miles of, the corporate limits of cities of over 75,000 population (e. g., combination tractor and semi-trailer, 42,000 pounds). For part of the taxable period involved in the *Hoover* case, the applicable law defined a violation as a misdemeanor, punishable, upon con-

It follows, then, contrary to the position of both taxpayers here, that the maximum weight laws here involved did reflect governmental policies susceptible to frustration if the intended effect of their penal pro-

viction (Sec. 304.240, Missouri Statutes, Appendix, *infra*, p. 97) "by a fine of not less than five dollars nor more than five hundred dollars or by imprisonment in a county jail for a term of not exceeding twelve months, or by both such fine and imprisonment." For the remaining taxable period, the Missouri law provided for certain minimum fines, or imprisonment for not more than twelve months, or both. (Sec. 1, Act of April 15, 1952.)

*New Jersey.* Section 39:3-84 of the New Jersey maximum weight laws (Appendix, *infra*, p. 101) were not directly involved in *Tank Truck*. The New Jersey fines (in all, only seven, amounting to $2,800 (T. R. 7 (a)) were imposed upon the taxpayer in that case pursuant to reciprocity provisions whereby the Pennsylvania weight limitations were made applicable to Pennsylvania vehicles operating on the New Jersey highways. The provisions of the New Jersey law imposing sanctions in those circumstances were no less penal in character than the provisions of the New Jersey maximum weight laws for the violation of which an offender was subject to a maximum fine of $100, and, upon default in payment, a maximum jail sentence of ten days. As the Tax Court concluded (T. R. 33a), "For reasons best known to itself, New Jersey has undertaken to accommodate its penal provisions to those of Pennsylvania in these circumstances, and it made it a criminal offense to operate Pennsylvania vehicles on its roads which exceeded the lower Pennsylvania limits."

*Ohio.* Sections 7248-1 and 7250-1 of the Ohio General Code (Appendix, *infra*, pp. 101-103) permitted certain specific maximum axle and wheel loads, and provided a statutory formula for determining permissible maximum gross weights. Insofar as applicable to the taxpayer in the *Tank Truck* case, the weights ranged from 57,000 to 67,600 pounds. The Code provided that anyone who violated its provisions (Sec. 7250-1) "shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined twenty-five dollars" plus certain additional amounts for overweight not exceeding 10,000 pounds, "or

visions was, as a practical matter, diminished by allowance of the claimed deductions. The fines imposed were not in the nature of compensation or a toll; they were not paid for each use of the highway by an overloaded truck but only when, in the exceptional case, the state enforcement officers detected such use.

Further evidence that the fines were penal and not compensatory may be found in the provisions in the various statutes for the granting of permits for over-

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imprisoned in the county jail or workhouse not more than thirty days, or both." For overweight exceeding 10,000 pounds, the offender was subject to an additional fine, or imprisoned for 30 days, or both. In any event, however, violations of "the weight provisions of vehicle and load relating to gross load limits" were subject to a fine of "not less than one hundred dollars." Sec. 7250-1.

*Tennessee.*—3 Williams, Tennessee Code Annotated (1954 Supp.) (Appendix, *infra*, pp. 114–119) provided a statutory formula for determining maximum axle loads, and permitted a maximum gross vehicle and load weight of 55,980 pounds. Violation of its provisions was designated as a misdemeanor, and "upon conviction thereof" a fine of not less than $25 and not more than $500 could be imposed. (Sec. 2715.9, Appendix, *infra*, pp. 118–119.) All fines, penalties, and forfeiture of bonds imposed or collected were payable, ten days after receipt, to the state's department of safety.

*West Virginia.* Sections 1721 (455) (a), 1721 (462), 1721 (463), and 1721 (468), of the West Virginia Code (Appendix, *infra*, pp. 119–121, 124–125) prescribed certain specific axle load limitations and contained a statutory formula for determining maximum gross weight limitations ranging from 54,000 to 60,800 pounds. Anyone violating these provisions was (Sec. 1721 (468) (a)) "guilty of a misdemeanor and upon conviction" was subject to a basic fine ranging from $25 to $100 for a first offense, $50 to $100 for a second offense, and $75 to $100 for third and subsequent offenses.

weight operation. The Pennsylvania law, for example, which in the taxable year involved in the *Tank Truck* case permitted operation of vehicles at a maximum load of 45,000 pounds, also authorized (Section 455 of the Pennsylvania Vehicle Code (Appendix, *infra*, p. 109)) the issuance of a "special permit * * * to operate * * * a vehicle and load * * * of a * * * weight exceeding the maximum specified in this act * * * for a single trip * * *." Actually, however, the policy of the Pennsylvania authorities was to issue a single-trip permit only where the load could not be reduced to the legal permit of 45,000 pounds. (T. R. 103a, 105a.) Thus, if the owner of a self-propelled truck crane weighing 70,000 pounds wished to have it cross Pennsylvania, he could apply for a special permit, and because the weight could not be reduced except by dismantling the equipment, the permit engineers were authorized to issue a permit covering one movement only, over specified roads. (T. R. 106a–107a; see *McDonald* v. *Pennsylvania R. Co.*, *supra*.)[20] However, where the load could be reduced to the 45,000-pound maximum, the granting of a permit was not allowed. Accordingly, if a taxpayer had applied for a permit to haul an overweight trailer it would not have been granted (T. R. 105a–106a); and that, as the

[20] The Georgia statute (Section 68.407.1 of the Georgia Code Annotated, Appendix, *infra*, p. 74) specifically provided for what the Pennsylvania authorities did in practice, namely, that a permit would be granted only where the vehicle was "of such nature that it is a unit which can not be readily dismantled or separated."

Tax Court found (T. R. 126a) "was the policy of the State of Pennsylvania."[24]

Significantly, too, some of the statutes here involved made it a condition precedent to the issuance of a special permit that an applicant be required to give bond or other security to indemnify against damage to the highways, bridges, *etc.*, thus providing specific and independent sources for compensation for damage, unrelated to the fines imposed by the penal provisions. The Kentucky statute is fairly typical. It provided (Section 189.270 of the Kentucky Revised Statutes) that the state highway department—

[24] Section 189.270 of the Kentucky Revised Statutes, Appendix, *infra*, pp. 84–85) also provided for the issuance of special permits "for stated periods, special purposes and unusual conditions, and upon such terms in the interest of public safety and the preservation of the highways as the department may, in its discretion, require." Section 85.003 (5) of the Illinois Statutes Annotated (Appendix, *infra*, pp. 76–77) authorized the granting of special permits in "emergency" situations, and then "only for limited periods and for trips over designated highways and streets * * * but in no case * * * [to] exceed a period of ten days." The Maryland Statute (Section 278 (j), Article 66½ of the Maryland Code (Appendix, *infra*, pp. 88–89), which contained no special initial permit to carry an overweight load, did, however, provide that on second or subsequent offense a vehicle carrying an indivisible load must return to the place of entry or origin in the State after obtaining a permit from the State Roads Commission to do so * * *."

For other special permit provisions, see Section 4501 of the Delaware Code (Appendix, *infra*, p. 72); Section 68.107.1 of the Georgia Code Annotated (Appendix, *infra*, pp. 74–75); Section 8273 of the Mississippi Code (Appendix, *infra*, pp. 92–93); Section 304.200 of the Missouri Statutes (Appendix, *infra*, p. 96); Section 1166.34 of the Tennessee Code (1952 Cum. Pocket Supp.) (Appendix, *infra*, pp. 113–114), and Section 2715.8 of the Tennessee Code (1954 Supp.) (Appendix, *infra*, pp. 116–118); Section 1721(465) of the West Virginia Code (Appendix, *infra*, pp. 122–124).

> shall require, as a condition to the issuance of the permit, that the applicant pay a reasonable fee, to be fixed by it, and may require that the applicant give bond, with approved surety, to indemnify the state or counties against damage to highways or bridges resulting from use by the applicant.

The Georgia,[25] Mississippi,[26] Tennessee,[27] and West Virginia[28] laws contained similar provisions.

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[25] Section 68.407.1 of the Georgia Code Annotated (Appendix, *infra*, pp. 74–75) provided that the permit authority could "limit or prescribe conditions of operation * * * when necessary to assure against undue damage to the road foundation, surfaces or bridge structures", as well as require "such undertaking or other security as may be deemed necessary to compensate the State for any injury to any road way or bridge structure."

[26] Section 8273 (c) of the Mississippi Code (Appendix, *infra*, p. 93) vested discretion in the State Highway Commission or local authorities to issue the permits and to set limitations for their issuance, "or otherwise to limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces or structures, and may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure."

[27] The Tennessee law differed somewhat in that it made it *mandatory* that anyone obtaining a special permit "give bond with surety * * * to indemnify the state * * * against damages to roads, or bridges, resulting from the use thereof by the applicant." Section 27158 of the Tennessee Code (1954 Supp.) (Appendix, *infra*, pp. 116–118.)

[28] Section 1721 (465) (c) of the West Virginia Code (Appendix, *infra*, pp. 122–124) provided that the receipt of a special permit issued by the state road commissioner was subject to limitations and conditions prescribed by the Commissioner, "when necessary to assure against undue damage to the road foundations, surface, or structures", in addition to which the road commissioner could also "require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway structure."

There is no merit in the suggestion (*Tank Truck* Br. 54, 56, 62–63) that the manner in which the states enforced the maximum weight laws demonstrated that they involved no (Br. 52) "sharply defined, *i. e.*, important and rational state policy."[29] As we have noted, *supra*, p. 29, the heart of taxpayers' argument is in essence no more than an attack on the wisdom of the state statutes, although no question is raised as to their validity. Of course the argument is raised at the wrong time and in the wrong forum. This Court will not judge either the wisdom of the state laws, or review the degree to which they are, or should be enforced. To require such review in the context of the instant problem—in effect, to substitute the judgment of the federal courts for that of the state legislatures and the state enforcement authorities—would not only impose an impossible burden upon the courts but would be contrary to principles of sound federalism. Moreover, even if the drivers of overweight vehicles were not imprisoned and did not lose their licenses, perhaps this was so only because none of the statutes in question made such punishment mandatory in the first instance. The Pennsylvania statute, typical in this respect, provided that only upon default in the payment of a fine could a jail sentence be imposed. Sec. 453. It was, of course, for the states themselves to prescribe the punishment for violation of the

[29] The taxpayer in *Tank Truck* would appear to characterize the type of statute involved in these cases as (Br. 52) "some state whim."

weight laws, and to determine the manner of enforcement.

As to the failure of the various highway authorities to require removal of excess weight as a condition to continued operation, none of the state statutes, other than the Indiana,[30] Maryland,[31] and Tennessee statutes,[32] appear to have *required* such action; it was permissive. For example, during the taxable year involved in the *Tank Truck* case, Section 454 of the Pennsylvania Vehicle Code provided that where a vehicle was overweight any peace officer of the state (Appendix, *infra*, p. 108) "*may* * * * require the operator to unload immediately such portion of the load as may be necessary to decrease the gross weight * * * to the maximum gross weight specified in this act." (Emphasis supplied.) The fact that in 1955 the Pennsylvania legislature passed a law increasing the fines for weight violations and requiring the removal of excess loads (*Tank Truck* Br. 57) is no proof that the prior legislation was not intended to have punitive and deterrent effect. At the most, the enactment of the 1955 law indicated that in the opinion of the state legislature the earlier provisions were no longer adequate and were not achieving the desired results.

So, too, the fact that the Pennsylvania fines were not imposed upon the taxpayer-owner of the vehicles

[30] Section 47–536a (6), 8 Burns, Indiana Statutes Annotated (1952), Part 2 (Appendix, *infra*, p. 81); Section 1, Indiana Acts of 1953, c. 183 (Appendix, *infra*, pp. 81–83).

[31] Section 278 (j), 2 Flack's Annotated Code of Maryland (1951), Article 66½. (Appendix, *infra*, pp. 88–89.)

[32] Section 1166.36, 2 Williams, Tennessee Code Annotated (1934). (Appendix, *infra*, pp. 111–113.)

but on the drivers, is irrelevant here, and in no way (as the taxpayer in *Tank Truck* contends (Br. 53)) "indicates a legislative purpose neither to punish past nor to deter future similar activity on the part of the carriers." Under its agreement with the labor union to reimburse the drivers, the ultimate imposition of the penalty was on the real offender, the taxpayer, and the desired deterrent effect was the same as though the fines had been directly imposed on it. In any event, assuming that the taxpayer is correct in attaching any significance to the fact that the fines were imposed upon the drivers, and not upon itself, it should nevertheless not be entitled to claim as an ordinary and necessary expense the payment of criminal penalties imposed on others. Cf. *Welch* v. *Helvering*, 290 U. S. 111, 114. This is especially so, where, as here, fines were incurred in the first instance by agents of the taxpayer because of acts done at the taxpayer's behest.[33]

## II

### THE TAXPAYERS' ARGUMENTS IN SUPPORT OF DEDUCTIBILITY ARE WITHOUT MERIT

In addition to the taxpayers' contentions already considered, several others merit comment although none, we submit, is persuasive here.

[33] Nor does the fact that under the union contract in *Tank Truck* drivers were not reimbursed for fines imposed for parking, speeding, or driving violations (see *supra*, p. 13) indicate that those offenses were more or less penal than violations of the maximum weight laws. Presumably, drivers were not authorized by the taxpayers to speed or park illegally, although they were certainly authorized to drive overloaded vehicles.

A. WILLFUL AND NONWILLFUL VIOLATIONS

In the *Hoover* case, the District Court assumed but did not find that the taxpayer (H. R. 12) "took every precaution that could fairly be demanded consistent with a practical operation of its business, and * * * did not act with wilful intent * * *." In the *Tank Truck* case, the Tax Court found that the Pennsylvania and New Jersey violations were (T. R. 122a) "conscious and deliberate" but that the taxpayer's operation of overloaded equipment in the other states (accounting for only 28 out of the total of 746 fines imposed in the taxable year) (T. A. 119a)) were "inadvertent and without [the taxpayer's] knowledge."

The taxpayers contend (*Hoover* Br., 6–11; *Tank Truck*, Br. 63–65) that even if fines resulting from willful violations are considered nondeductible, the fines imposed for the nonwillful and so-called unavoidable violations nevertheless are deductible because their allowance would not frustrate the public policy underlying the sanctions imposed. The same contention was advanced, and rejected, at an early date. In *Great Northern Railway Co.* v. *Commissioner*, 8 B. T. A. 225, the Board of Tax Appeals, having found that the various violations there involved were (p. 234) "the result of negligence or inadvertence on the part of petitioner's employee", nevertheless disallowed the deductions claimed for the fines imposed. And although it was urged on appeal that the deductions should not have been disallowed since the violations were inadvertent, the Court of Appeals for the Eighth Circuit (*Great*

*Northern Ry. Co.* v. *Commissioner*, 40 F. 2d 372) disregarded the argument completely. See also *Terminal Railroad Assn. of St. Louis* v. *Commissioner*, *supra*.

The fallacy of the taxpayers' argument lies in their failure to recognize that none of the statutes involved in the instant cases distinguishes between an innocent or non-negligent violation and one which is either willful or due to a negligent failure to take adequate precaution. As the District Court observed in the *Hoover* case (H. R. 13, 16–17):

> It was evidently considered that the purposes of the statutes could be accomplished more effectively by treating all violators alike. This thought is borne out by the provisions commonly found in statutes of this character, that the Commissioner of Highways, or other proper authority, shall have discretionary power to grant special permits for freight movements in excess of the prescribed weight limitations, the inference being that, in the absence of such special permit, neither hardship nor good faith shall constitute a defense to a violation.
>
> * * * * * *
>
> * * * the policy of the state weight limitation laws under consideration is to place all violators on the same basis without recognition of degrees or character of guilt. This being true, it would clearly frustrate the policy of the statutes if * * * [a] distinction [between innocent and willful violations] should be made * * * in applying the provisions of Section 23 (a), (1) (A) of the Internal Revenue Code. To the extent that the deductions should be allowed because of innocence or due care the taxpayer

would be relieved of the consequences of his violation, although the state law itself made no such distinction.

The Tax Court in the *Tank Truck* case held a similar view. (T. R. 134a–135a.)

Both appellate courts below properly distinguished *Jerry Rossman Corp.* v. *Commissioner*, 175 F. 2d 711 (C. A. 2d), upon which the taxpayers here rely. In *Rossman*, the Second Circuit actually held that the payment to the Government of the amount of the overcharge was not a penalty, but that, even if it was regarded as such, the policy of the Emergency Price Control Act would not be frustrated if the amount paid over to the Administrator was taken as a deduction. The court reached that result because it found that the Administrator, in applying the Act, had adopted a policy of distinguishing between innocent and willful violators. Accordingly, where the Administrator accepted the amount paid as sufficient without requiring the payment of treble damages, that was evidence of the fact that he had regarded the overcharge as having been made innocently. The policy which the Administrator had thus pursued was incorporated into the Act itself by the 1944 amendment of Section 205 (e). See *National Brass Works* v. *Commissioner*, 182 F. 2d 526 (C. A. 9th); *National Brass Works* v. *Commissioner*, 205 F. 2d 104 (C. A. 9th); *Commissioner* v. *Pacific Mills*, 207 F. 2d 177 (C. A. 1st). In the *Pacific Mills* case, the court held that it was (p. 182) "clearly evident from the wording of the amended statute itself, as well as from the legislative history of the amendatory act, that the funda-

mental policy of the act as amended was to draw a sharp line of distinction between innocent violators on the one hand, and those who had either violated the act wilfully, or else had failed to take practicable precautions to comply, on the other." Manifestly, the OPA cases upon which the taxpayers rely involved a decisive factor not present in the instant cases, *i. e.*, a clear demonstration by the legislative body (Congress) that the distinction drawn by the Administrator between innocent and willful offenders was fully justified. The existence of that factor permitted the conclusion that where the violation was unintentional the payment to the Government of the amount of an overcharge was not designed as a punitive measure or as a deterrent, but rather to prevent the unjust enrichment of the offender. The allowance of a deduction on that hypothesis would no more frustrate the policy of the basic legislation than would readjustment of the selling price by return of the amount of the overcharge. Nor would it minimize any punishment, since none was intended.

In the instant cases, however, as conceded (*Tank Truck* Br. 18), "the weight laws make no express distinction between innocent and wilful violators." Upon the hypothesis, accepted by both courts below, that the maximum weight laws were serious and meaningful safety measures, it would be illogical to conclude that allowance of fines paid for willful violations would frustrate the laws, while allowance of fines for innocent violations would not. If, in the view of the state legislatures, overweight vehicles on public highways in and of themselves constituted a

danger to the public, that danger obviously was not any the less because the overloading had been inadvertent or unintentional. The statutes thus clearly fall within the area of public safety and welfare where the state may exercise its police power by imposing liability without fault and, as we have noted, the validity of the statutes is not in issue here.

There is a further distinction between *Rossman* and the instant cases. The basic inquiry in the OPA cases was whether or not the payment required to be made on account of the overcharge was punitive; the test employed was whether the violations were willful or not. But in either event, the payment to the Administrator was of a civil nature, as contrasted with the criminal character of the penalties here involved. There is no suggestion in the OPA cases that if an overcharge exaction had arisen as the result of criminal prosecution by the Administrator, a tax deduction would have been allowed. On the contrary, inquiry as to willfulness where payments are made as the result of criminal violations is not pertinent, since criminal penalties are necessarily punitive.

Finally, we submit, there is no merit in the argument (*Tank Truck* Br. 15, 34–39) that a failure to allow deductions here for the fines paid on account of nonwillful violations is inconsistent with decisions holding that a taxpayer may deduct damages paid to a private person because of a wrong or tort committed in the operation of his business. The two situations are not at all analogous. One involves a wrong committed against a private individual or entity; the other, a crime against the state. One

involves the concept of compensation or restitution; the other, punishment for an offense. In any event, if A wrongs B and pays damages to B pursuant to law, it is clear that the public policy of the law which requires him to make compensation or restitution is fully carried out if B is in fact restored to his prior position, even if A is permitted a deduction. But where A pays a fine or penalty for the commission of an offense against the state, the punitive and deterrent purposes of the law are indeed frustrated, for as the courts have noted, the practical effect of the allowance of a deduction is to lessen the amount of the fine imposed.

B. CONGRESSIONAL INTENT WITH RESPECT TO SECTION 23 (a) (1) (A)

The taxpayer in *Tank Truck* (Br. 20–24) in effect contends that the failure of Congress in 1913 and 1951 to impose a gross income tax on illegal businesses demonstrates that it intended, under the 1939 Code, to permit lawful businesses to take deductions for expenditures even though the expenditures were penalties for unlawful activity. The contention is without merit. The basic assumption underlying the taxpayer's reliance upon the legislative history of Section II (A) and (G) (b) of the Income Tax Act of 1913, c. 16, 38 Stat. 114, and upon Congress' failure in 1951 to enact into law Senator Kefauver's proposal that no deduction shall be allowed for expenses incurred in the conduct of illegal gambling, is that, since Congress has seen fit to tax gains, profits and income without reference to source, it necessarily intended to permit de-

duction of expenditures without reference to the fact that such expenditures may result from violation of the law. The short answer is that by its very terms Section 23 (a) (1) (A) of the 1939 Code—as did Section 11 (A) and (G) (b) of the 1913 Act with respect to corporations—restricts deductions to those expenses which are "ordinary and necessary"; and the fines and penalties paid for violation of state penal provisions are not "ordinary and necessary." As long ago as the decision in *Bacher v. Commissioner, supra*, the Board of Tax Appeals observed that (p. 216) "It would be an anachronism to say that * * * an act, so inimical to the public interest as to justify punishment for its commission, may at the same time be so recognized that the expense involved in its commission is sanctioned by the revenue law as an ordinary and necessary expense of carrying on a business." In any event, no such sweeping conclusion as the taxpayer draws is warranted from Congress' failure in 1951 to adopt Senator Kefauver's proposals. The Senate Committee Report indicated no conclusive reaction to it, but only that "additional time is necessary for detailed study of these suggestions and therefore * * * action on them should not be taken at this time." S. Rep. No. 781, 82d Cong., 1st Sess., p. 120 (1951-2 Cum. Bull. 458, 544). Moreover, the debate on the proposal (97 Cong. Record, Part 9, pp. 12,230-12,244) shows that Senator Kefauver had more in mind than the disallowance of all expenses paid or incurred in connection with illegal wagering; the proposed amendment was in fact part of a legislative package, containing, in addition, provisions for the

maintenance and inspection of the records of gambling houses, for the filing of net worth statements by all individuals with gross incomes over $10,000 earned from one or more unlawful businesses, and for the preservation of records for a period of seven years after the date of the transactions to which they related. Thus vis-à-vis the taxpayer's argument here, the Senate's rejection of the Kefauver proposal was, at best, equivocal.

Nor may any similar inference as to congressional intent be drawn from the fact that in enacting the Internal Revenue Code of 1954 Congress did not adopt the recommendations of the American Law Institute (*Tank Truck* Br. 22–23) to include provisions specifically disallowing the type of expenditure here involved. If any implication is warranted, it would seem to be that Congress was satisfied that a long standing construction of Section 23 (a) (1) (A) had evolved by 1954 precluding any deduction for reasons of public policy inherent in the terms "ordinary and necessary". (*Heininger, supra*, p. 473) "Where a taxpayer has violated a federal or a state statute and incurred a fine or penalty * * *," Congress may well have relied on the assumption that the Courts would continue to reject the cynical contention that it was "ordinary and necessary" to violate the laws of the states.

Finally, the Commissioner's Special Ruling of September 10, 1942 (1950 C. C. H., par. 6134)[*] affords no support for the construction of Section 23 (a) (1)

[*] Reprinted in the Appendix to the *Tank Truck* brief, pp. 9a–12a.

(A) contended for by the taxpayers. That ruling was made on the premise that state penalties for violation of maximum weight laws more nearly resembled tolls than fines. The Commissioner subsequently determined that that premise was erroneous; and accordingly, effective as to fines incurred or paid on or after December 1, 1950, he ruled that fines paid by truckers for violation of state laws prescribing maximum weights, loads and sizes of vehicles were penalties which were not deductible as ordinary and necessary business expenses under Section 23 (a) (1) (A) of the Code. I. T. 4042, 1951-1 Cum. Bull. 15. (Appendix, *infra*, pp. 65–66.)

C. THE "INTEGRALITY" TEST

The essence of the taxpayer's extensive argument in *Tank Truck* (Br. 24–51) is that the economic relationship of the fines and penalties to the conduct of its business requires that the expenditures be regarded as "ordinary and necessary" within the meaning of Section 23 (a) (1) (A).[35] In effect, the taxpayer would have this Court apply the same test used by the United States Court of Appeals for the Seventh Circuit in *Commissioner* v. *Doyle*, 231 F. 2d 635. There, in an opinion underlying its subsequent decisions in the *Sullivan*, *Ross* and *Mesi* cases,[36] the Seventh Circuit

[35] Nor is the manner in which the fines in question were treated by state regulatory bodies, pursuant to accounting rules laid down by the Interstate Commerce Commission, controlling for federal tax purposes. Cf. *Old Colony Railroad Co.* v. *Commissioner*, 284 U. S. 552, 562.

[36] *Sullivan and Ross* v. *Commissioner*, 241 F. 2d 46; *Mesi* v. *Commissioner*, 242 F. 2d 558.

asserted, in substance, that the legal or illegal expenditures of a legal or illegal business are deductible if they are (p. 637) "economically * * * an integral part of a business."

But such a test is irreconcilable, we submit, with the long line of decisions holding that the "ordinary and necessary" standard precludes allowance of expenditures where to do so would "frustrate sharply defined * * * state policies proscribing particular types of conduct." *Commissioner* v. *Heininger, supra,* 320 U. S., at 473.

Moreover, it is an unrealistic and unworkable test: A payment made on account of a fine or penalty imposed for the commission of a crime, no matter how "integral" it is in the carrying on of the business in which a taxpayer is engaged, could not have been regarded by Congress as "ordinary and necessary." It is not "ordinary and necessary" for businessmen to commit crimes or to incur the penalties imposed therefor. If Congress had legislated in the income tax laws on any contrary assumption, surely there would have been some indication of it in the language and history of the legislation. There is none.

The lower courts have consistently denied deductions for expenditures which were undoubtedly "integral" to the income-producing enterprises involved. For example, they have denied deductions for bribes, and for payments made to influential politicians in order to obtain state contracts, despite the fact that the taxpayers involved might not have obtained the business sought except by making the payments. *E. g., Rugel* v. *Commissioner, supra; Harden M. Loan*

*Co.* v. *Commissioner, supra; Nicholson* v. *Commissioner, supra; Easton Tractor & Equipment Co.* v. *Commissioner, supra.* Similarly, the courts have denied deductions for payments to racketeers (*Reliable Milk & Cream Co.* v. *Commissioner*, decided August 20, 1938 (1938 P-H B. T. A. Memorandum Decisions, par. 38,290)); for amounts paid as commercial extortion (*Kelly-Dempsey & Co.* v. *Commissioner, supra*); for payments by abortionists to their assistants and procurers (*Giubbini* v. *Commissioner, supra; Estate of Karger* v. *Commissioner, supra*); and, as in the instant cases, for payments of fines and penalties resulting from violations allegedly unavoidable in the conduct of business (*Great Northern Ry. Co.* v. *Commissioner, supra; Terminal Railroad Assn. of St. Louis* v. *Commissioner, supra*). In all of these cases the expenditures were undoubtedly as economically necessary to the conduct of the various income-producing activities as the taxpayers here contend was the situation with respect to the fines and penalties. Yet the deductions were denied. We think it significant that even the Seventh Circuit, in announcing the distinction between so-called "integral" expenses (deductible) and so-called "concomitant" expenses (nondeductible), specifically included in the category of nondeductible expenditures (*Commissioner* v. *Doyle, supra*, p. 637): "fines and penalties imposed for violations of federal or state statute." This is in accord with this Court's decision in *Textile Mills, supra*, since the compensation paid by the corporation in that case to a publicist and to two legal experts was, as the trial court found (*Textile Mills Corp.* v. *Commis-*

*sioner*, 38 B. T. A. 623, 627), "in fact ordinary and necessary in performing the services required of it under its contract" to procure the enactment of certain legislation. We submit that if this Court had taken the same view of the "ordinary and necessary" language of Section 23 (a) as the taxpayers here would have it do, it would have held in *Textile Mills* that the Treasury regulation involved in that case was in conflict with the statute, and therefore invalid. It did not do so.

## CONCLUSION

The judgments of the courts below should be affirmed.

Respectfully submitted.

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DECEMBER 1957.

# APPENDIX

Internal Revenue Code of 1939:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(a) [as amended by Sec. 121 (a), Revenue Act of 1942, c. 619, 56 Stat. 798, 819] *Expenses.*—

(1) *Trade or business expenses.*—

(A) *In general.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; * * * and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

* * * * *

(26 U. S. C. 1952 ed., Sec. 23 (a).)

I. T. 4042, 1951-1 Cum. Bull. 15:

SECTION 23 (a).—DEDUCTIONS FROM GROSS INCOME: EXPENSES

Section 29.23 (a)-1: Business Expenses.

Internal Revenue Code

Fines paid by truck operators for violations of State laws prescribing maximum weights, loads, and sizes of vehicles are penalties which are not

deductible as ordinary and necessary business under section 23 (a) (1) (A) of the Internal Revenue Code.

Reconsideration has been given to the conclusion heretofore reached by the Bureau that fines paid by truck operators for violations of State laws prescribing maximum weights, loads, and sizes of vehicles are deductible from gross income as ordinary and necessary business expenses under section 23 (a) (1) (A) of the Internal Revenue Code.

That conclusion was based upon the understanding that the fines in question were paid in lieu of fees which would have been payable for permits to operate overloaded or overlength vehicles, and that such permits were generally granted by State highway authorities. The fines were, therefore, regarded as more in the nature of tolls than penalties.

Upon reconsideration of the question involved it appears that the premise on which the Bureau's conclusion was based was erroneous. It is therefore held that fines paid by truck operators for violations of State laws prescribing maximum weights, loads, and sizes of vehicles are penalties which are not deductible as ordinary and necessary business expenses under section 23 (a) (1) (A) of the Internal Revenue Code. (See *Burroughs Building Material Co.* v. *Commissioner*, 47 Fed. (2d) 178, Ct. D. 297, C. B. X–1, 397 (1931), and G. C. M. 11358, C. B. XII–1, 29 (1933).)

Pursuant to authority contained in section 3791 (b) of the Code, the instant ruling will not be applied to fines incurred or paid prior to December 1, 1950.

GEO. J. SCHOENEMAN,
*Commissioner of Internal Revenue.*

Approved November 30, 1950.

THOMAS J. LYNCH,
*Acting Secretary of the Treasury.*

Code of Alabama (1940), Title 36, c. 3:

§ 83. *Penalties; in general.*—The operation of any motor truck, semi-trailer truck or trailer, in violation of any section of this chapter, or of the terms of any permit issued hereunder, shall constitute a misdemeanor, and the owner thereof, if such violation was with his knowledge or consent, and the operator thereof, shall on conviction be fined not less than one hundred dollars nor more than five hundred dollars, and may also be imprisoned or sentenced to hard labor for the county for not less than thirty days nor more than sixty days.

§ 89. *Size and weights of vehicles and loads.*—It shall be unlawful for any person to drive or move on any highway in this state any vehicle or vehicles of a size or weight except in accordance with the following provisions:

* * * * *

(d) *Weight.* "No vehicle shall carry a wheel load in excess of eight thousand pounds, nor an axle load in excess of sixteen thousand pounds, nor shall it exceed six hundred pounds per inch width of tire measurement by outside cross section width of tire, nor shall any vehicle exceed in gross load thirty thousand pounds, provided, however, the gross load limit of motor vehicle or combination of vehicles upon the county roads shall not exceed twenty thousand pounds except in cases where the governing body of the county shall have authorized by resolution spread upon the minutes a greater gross load limit upon the county road of such county. The term "axle load" as herein used shall mean the total load of all wheels whose centers may be included between two parallel transverse vertical planes forty inches apart.

§ 91. *Director of highway department may issue permits.*—The director of the highway

department may issue special permits, without cost to the applicant therefor, in isolated cases only, for movement of oversize, overweight, or overlength commodities, which can not be reasonably dismantled, and for the operation of such super-heavy or oversized motor trucks, or semi-trailers, whose gross weight, including loads whose height, width or length may exceed the limits prescribed in this article, or which in other respects fail to comply with the requirements of this chapter, as may be reasonably necessary for the transportation thereof; said permits shall be issued and may be renewed upon such terms and conditions, in the interest of public safety and the preservation of the highways, as the director of the highway department may in his discretion require, and he may designate the route over which such commodities may be transported, and hours of movement, provided that no county roads are included in said route. He may, in his discretion, require as a condition to the issuance of any such permit that the applicant give bond, with or without surety, to indemnify the state against damage to roads or bridges resulting from the use thereof by the applicant; the operation of motor trucks, tractors, or semi-trailers, in accordance with the terms of such permit shall not constitute a violation of the provisions of this article, provided the operator thereof shall have in his possession said permit, or a copy thereof, authenticated as the director may require.

§ 92. *Exemptions for transportation of perishable food.*—There shall be exempt from the provisions of this article as to weight, any motor truck or semi-trailer truck transporting milk or other perishable food for human consumption, for which refrigeration in transit is reasonably necessary in the interest of public health, when moving under refrigeration in refrigerated containers, insulated containers or in

thermos containers, to or from market from the territory in which such commodity is collected or concentrated.

10. Delaware Code Annotated (1953), Title 21:

§ 4501. *Size and weight of vehicles generally*

No person shall drive or move, or, being the owner, cause or knowingly permit to be driven or moved, on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this chapter, or the rules and regulations of the Commissioner adopted pursuant thereto, or of a gross weight exceeding that for which it is registered. The maximum size and weight of vehicles herein specified shall be lawful throughout this State, and local authorities may not alter such limitations except as express authority is granted in this chapter.

§ 4503. *Weights of vehicles and loads*

(a) No motor vehicle, equipped with solid rubber tires, shall have a gross weight, including vehicle and load, of more than 22,000 pounds, or shall any two-axle motor vehicle equipped with pneumatic tires have a gross weight, including vehicle and load, of more than 26,000 pounds, or a gross weight of more than 36,000 pounds for a three-axle vehicle.

(b) No vehicle with solid tires shall have an axle load of more than 16,000 pounds.

(c) No motor vehicle or physically connected combination of vehicles, mounted on pneumatic tires, shall have an axle load in excess of 700 pounds per inch of the aggregate width of its tires, measured at the point of greatest width of each tire, or more than 20,000 pounds in any event.

(d) The gross weight of a trailer and load together shall not exceed 22,000 pounds.

(e) No trailer equipped with metal tires bearing a gross load in excess of 6,000 pounds shall be allowed on state highways.

(f) No motor vehicle or combination of vehicles the gross weight of which is in excess of 36,000 pounds, shall be operated on the highways of the State unless such vehicle or combination of vehicles is equipped with power brakes.

(g) It shall be lawful to operate a vehicle equipped with two axles, with a power brake on each rear hub provided that the gross weight including vehicle and load does not exceed 30,000 pounds.

(h) It shall be lawful to operate a vehicle equipped with three axles, having each of the rear axles equipped with two hubs, with a power brake on each rear hub provided that the gross weight including vehicle and load, does not exceed 40,000 pounds.

(i) It shall be lawful to operate a semi-trailer with one axle, equipped with a power brake on each hub, provided that the gross weight of the combination of tractor and semi-trailer does not exceed 48,000 pounds.

(j) It shall be lawful to operate a semi-trailer, equipped with coupled axles spaced 48 inches or more apart measured horizontally, with a power brake on each hub, provided that the axle weight does not exceed 18,000 pounds per axle, and provided further that the gross weight of the combination tractor and coupled axle semi-trailer, does not exceed 60,000 pounds: and also provided that in the case of a low-bed trailer, such as is commonly used in moving heavy equipment, coupled axles may be spaced 36 inches or more apart.

(k) With respect to any vehicle containing coupled axles spaced less than 48 inches apart measured horizontally between their center lines, the load for each of such coupled axles shall not exceed 10,000 pounds, the load for axles spaced 48 inches or more apart center to center of axles shall be governed by the table for maximum gross weights.

(l) The total gross weight imposed on the

highway by any group of two or more consecutive axles of a vehicle or of any combination of vehicles shall not exceed that given in the following table for the respective distance between the centers of the first and last axles of said two or more consecutive axles:

TABLE FOR MAXIMUM GROSS WEIGHTS

| *Distance in feet between first and last axles of any group* | *Maximum load in pounds carried on any group* |
|---|---|
| Less than 4 feet | 20,000 |
| 4 feet | 36,000 |
| 5 feet | 36,000 |
| 6 feet | 36,000 |
| 7 feet | 36,000 |
| 8 feet | 36,000 |
| 9 feet | 36,000 |
| 10 feet | 36,000 |
| 11 feet | 36,000 |
| 12 feet | 36,470 |
| 13 feet | 37,420 |
| 14 feet | 38,360 |
| 15 feet | 39,300 |
| 16 feet | 40,230 |
| 17 feet | 41,160 |
| 18 feet | 42,080 |
| 19 feet | 42,990 |
| 20 feet | 43,900 |
| 21 feet | 44,800 |
| 22 feet | 45,700 |
| 23 feet | 46,590 |
| 24 feet | 47,470 |
| 25 feet | 48,350 |
| 26 feet | 49,220 |
| 27 feet | 50,090 |
| 28 feet | 50,950 |
| 29 feet | 51,800 |
| 30 feet | 52,650 |
| 31 feet | 53,490 |
| 32 feet | 54,330 |
| 33 feet | 55,160 |
| 34 feet | 55,980 |
| 35 feet | 56,800 |
| 36 feet | 57,610 |
| 37 feet | 58,420 |
| 38 feet | 59,220 |
| 39 or more | 60,000 |

(m) The distance between axles shall be measured to the nearest even foot. When a fraction is exactly one-half foot the next larger whole number shall be used.

§ 4504. *Permits for excessive size and weight*

(a) The State Highway Department, and local authorities in their respective jurisdictions, may upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle of a size or weight exceeding the maximum specified in this chapter, upon any highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. Every such permit shall be issued for a single trip, except that 30 day blanket permits may be issued for piling or pole trailers, and each such permit may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting such permit. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer.

(b) No person shall violate any of the terms or conditions of a special permit issued under subsection (a) of this section.

(c) Vehicles or trailers referred to in subsection (a) of this section shall be registered with the Department as provided by chapter 21 of this title, upon the payment of the fee provided by such chapter. The T registration plates shall be issued by the Department for all such vehicles or trailers.

§ 4506. *Police officers' authority to weigh vehicles and require removal of excess loads*

Any uniformed police officer, having reason to believe that the weight of a vehicle and load is unlawful, may weigh the same either by means of portable or stationary scales, and may

require that such vehicle be driven to the nearest scales in the event such scales are within three miles. The officer may then require the driver to unload immediately such portion of the load as is necessary to decrease the gross weight of such vehicle to the maximum therefor specified in this chapter or for which it is registered. All such material shall be unloaded and cared for by the owner or operator of the truck at the risk of such owner or operator.

§ 4507. *Violations of chapter; penalties.*

Whoever violates any provision of this chapter shall; for the first offense, be fined not less than $10 nor more than $100, or imprisoned not less than 10 nor more than 30 days, or both. For each subsequent like offense, he shall be fined not less than $50 nor more than $200, or imprisoned not less than 15 nor more than 30 days, or both. All second or subsequent offenses under this chapter, before being punishable as such, shall have been committed within 12 months after the commission of the first offense.

Georgia Code Annotated (1955 Cum. Pocket Supp.):

68–405. *Limitation as to size of vehicle and weight of load.*—It shall be unlawful to operate upon any public road or public highway of this State any vehicle or vehicles which do not conform to uniform standard specifications which have been adopted by the American Association of Highway Officials and the United States Bureau of Public Roads as follows:

* * * * *

(b) No wheel equipped with high pressure, pneumatic, solid rubber or cushion tires shall carry a load in excess of 8,000 pounds, or any axle load in excess of 16,000 pounds; no wheel equipped with low-pressure pneumatic tires shall carry a load in excess of 9,000 pounds, or any axle load in excess of 18,000 pounds; an axle load shall be defined as the total load on all

wheels whose centers may be included between two parallel traverse vertical planes 40 inches apart. If the driver of any vehicle can comply with the requirements of this section by shifting or equalizing the load on all wheels or axles and does so when requested by the proper authority said driver shall not be held to be operating in violation of this section.

(c) Subject to the limitation imposed by the recommended axle loads, no vehicle shall be operated whose total gross weight, with load, exceeds that given by the formula $W=c(L+40)$ where:

$W$ = total gross weight with load, in pounds;

$c=700$;

$L$ = the distance between the first and last axle of a vehicle or combination of vehicles, in feet.

68–407.1. *Special permit to operate vehicles exceeding weight prescribed.*—The chairman of the State Highway Board or the official of the State Highway Department designated by the chairman may, in his discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a motor vehicle or combination of vehicles, the weight of which such vehicle or vehicles and load exceeds the maximum limit specified by law, upon the public highways of this State: Provided that the load transported by such vehicle or vehicles is of such nature that it is a unit which can not be readily dismantled or separated.

The application for any such special permit shall specifically describe the motor vehicle or vehicles and load to be operated or moved, and the particular highway for which permit to operate is requested.

The chairman of the State Highway Board or the official of the State Highway Department designated by the chairman is authorized to withhold such permit at his discretion, or, if

such permit is issued, to limit the number of trips, or to establish seasonal or other time limitation within which the vehicles described may be operated on the highway indicated, or otherwise to limit or prescribe conditions of operation of such vehicle, or vehicles, when necessary to assure against undue damage to the road foundations, surfaces or bridge structures, and require such undertaking or other security as may be deemed necessary to compensate the State for any injury to any road way or bridge structure.

Every such special permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or State patrolman or authorized agent of the State Highway Department.

68-9921. *Violation of section 68-405 et seq., relating to size of vehicle, weight of load, and lamps.*—Any person, firm, corporation, association, trustee, receiver, or other fiduciary, or owner, employee or other agent, who, by himself, itself, or themselves, or through or in connection with another, violates or participates in violation of any of the provisions of section 68-405 et seq., relating to size of vehicle, weight of load, and lamps, shall be guilty of a misdemeanor and punished as such.

68-9925. *Violation of terms of excessive weight permit.*—Any operator of a motor vehicle operating under the special permit to operate a vehicle of excessive weight, as prescribed by section 68-407.1, or the owner of such vehicle, shall be guilty of a misdemeanor if such operator or owner shall violate any of the terms or conditions of such special permit.

15 Jones, Illinois Statutes Annotated:

85.003 *Maximum gross loads—Maximum width and length—Number plate—Trailers—Permits.*] § 3. (1) The maximum gross weight to be permitted on the road surface through any axle of any vehicle shall not exceed sixteen

thousand pounds, nor shall it exceed eight hundred pounds per inch of width of tire upon any one wheel. *Provided, further*, that the gross weight, including the weight of the vehicle and maximum load of any self-propelled four-wheel vehicle shall not exceed twenty-four thousand pounds. The gross weight including the weight of the vehicle and the maximum load of any self-propelled six or more wheel vehicle including the weight of the vehicle and the maximum load, or the gross weight of any self-propelled vehicle operated as a tractor with one semi-trailer, including the weight of said vehicle and semi-trailer with their maximum loads, shall not exceed forty thousand (40,000) pounds, nor shall any two axles lie in the same vertical plane, nor shall the axle spacing be less than forty inches from center to center: *provided*, that the axle arrangement shall be such that the proportion of the gross load carried on any axle shall remain constant: and the gross weight, including the weight of the vehicle and maximum load, of any trailer or semi-trailer vehicle pulled or towed by a motor vehicle shall not exceed thirty-two thousand pounds.

(2) Weight limits 50 per cent above those provided for herein may be permitted by ordinance in cities having a population of more than 20,000, but such increase shall not apply to vehicles when outside the limits of such a city, nor shall the gross weight of any vehicle operating over any street or highway of this State exceed forty thousand (40,000) pounds.

* * * * *

(5) * * * ."

Upon application the highway or street officials having proper jurisdiction over a particular highway may grant special permits in writing for the operation of vehicles or combinations of vehicles and trailers or semi-trailers exceeding the foregoing weights and dimensions. Such permits may be granted in the discretion

of the highway or street officials which in their opinion an emergency exists warranting the granting of the permit. The permit shall be granted only for limited periods and for trips over designated highways and streets, at specified times and subject to such other conditions as such highway or street officials may prescribe, but in no case shall such permit exceed a period of ten days.

85.065 *Penalties—Revocation of license—Disposition of fines—Appointment of investigators.*] § 43. Any person wilfully violating the provisions of this Act shall, except as otherwise provided herein, upon conviction, be fined in a sum not to exceed the amount hereinafter set forth.

* * * * *

For the violation of any section or provision for which no specific penalty is provided, one hundred dollars ($100.00).

*Provided*, that any offender who shall have been found guilty of a violation of any section of this Act and who shall thereafter be convicted of a second violation of such section, may be fined in a sum not exceeding double the penalty herein provided for a first offense, and in addition thereto may have his certificate or license issued by the Secretary of State revoked for a period not exceeding three months, and for a third or subsequent violation of the same section of this Act the certificate or license may, in addition to the fine provided for the second offense, be revoked for a period not exceeding six months. Any person whose license shall have been revoked for a violation of any of the provisions of this Act and who shall drive or operate a motor vehicle or motor bicycle within the State of Illinois, during the period for which his said license shall have been revoked, or any person who, having once been convicted of a failure to comply with the provisions of this Act requiring a registration of motor vehi-

cles or motor bicycles or the examination and licensing of chauffeurs shall fail or refuse to comply with said provisions, shall be deemed guilty of a misdemeanor and on conviction may be fined in a sum not to exceed two hundred dollars, or imprisonment in the county jail for a period not exceeding thirty (30) days, or both in the discretion of the court. * * *

* * * * * *

8 Burns, Indiana Statutes Annotated (1952), Part 2:

47-536. *Weight of vehicles—Heavy duty highways—Axle, axle weight, and tandem axle defined.*—(a) It shall be unlawful to operate or cause to be operated any vehicle or combination of vehicles having a weight in excess of one [1] or more of the following limitations:

(1) The total gross weight, with load, in pounds of any vehicle or combination of vehicles shall not exceed seventy-two thousand [72,000] pounds.

(2) The total weight concentrated on the roadway surface from any tandem axle group shall not exceed sixteen thousand [16,000] pounds for each axle of a tandem assembly.

(3) No vehicle shall have a maximum wheel weight, unladen or with load, in excess of eight hundred [800] pounds per inch width of tire, measured between flanges of rim nor an axle weight in excess of eighteen thousand [18,000] pounds.

(4) Provided, however, it shall not be unlawful to so operate if operating within the scope of a permit secured as provided in section 10 [§ 47-538] of this act. Provided, further, That it shall not be unlawful to operate or cause to be operated a vehicle or combination of vehicles on a heavy duty highway so declared by the state highway commission of Indiana, if operated within the limitations so imposed on said highway.

(b) The state highway commission of Indiana hereby is authorized to established [establish] and designate certain highways as heavy duty highways and to disestablish and remove any highway, or part thereof, from any designation of heavy duty highways theretofore designated by it as a heavy duty highway. All such designations and removals shall be made by regulation duly adopted as provided by law. From time to time such commission shall publish a map showing all heavy duty highways then designated by it. Whenever such commission shall have designated a heavy duty highway it shall also fix the maximum weights which may be transported on such highways. Such maximum weights shall not exceed the following limitations:

(1) No vehicle shall have a maximum wheel weight, unladen or with load, in excess of eight hundred [800] pounds per inch width of tire, measured between flanges of rim, nor an axle weight in excess of twenty-two thousand four hundred [22,400] pounds.

(2) The total weight concentrated on the roadway surface from any tandem axle group, shall not exceed eighteen thousand [18,000] pounds for each axle of the assembly.

(3) The total gross weight, with load, in pounds of any vehicle or combination of vehicles shall not exceed seventy-two thousand [72,000] pounds.

No highway of this state shall be designated a heavy duty highway unless such commission shall find that such highway is so constructed and can be so maintained, or is in such condition, that the use thereof as a heavy duty highway will not materially decrease or contribute materially to the decrease of the ordinary useful life of such highway.

(c) As used in this act:

(1) "Axleweight" shall be considered the total weight concentrated on one [1] or more

axles spaced less than forty [40] inches from center to center.

(2) An "axle" shall be construed to be the common axis of rotation of one [1] or more wheels or rollers whether power driven or freely rotating, and whether in one [1] or more segments and regardless of the number of wheels carried thereon.

(3) "Tandem axle group" shall be considered to be two [2] or more axles spaced more than forty [40] inches from center to center having at least one [1] common point of weight suspension.

47–536a. *Fines proportional to amount of overweight—Impounding overweight vehicle.*— Any person who operates or causes to be operated any vehicle or combination of vehicles having a weight in excess of one [1] or more of the limitations set out in section 8 [§ 47–536] shall be guilty of a misdemeanor and on conviction shall be fined as follows:

(1) If the total of all excesses of weight under one [1] or more of the limitations in section 8 is less than 1,000 pounds, no fine.

(2) If the total of all excesses of weight under one [1] or more of the limitations in section 8 is less than 2,000 pounds and more than 1,000 pounds, two cents [2¢] a pound for each pound over 1,000 pounds.

(3) If the total of all excesses of weight under one [1] or more of the limitations in section 8 is 3,000 pounds or less and more than 2,000 pounds, four cents [4¢] a pound for all such excesses.

(4) If the total of all excesses of weight under one [1] or more of the limitations in section 8 is 4,000 pounds or less and more than 3,000 pounds, six cents [6¢] a pound for all such excesses.

(5) If the total of all excesses of weight under one [1] or more of the limitations in section 8 is 4,000 pounds or more and less than 5,000

pounds, eight cents [8¢] a pound for all such excesses.

(6) If the total of all excesses of weight under one [1] or more of the limitations in section 8 is 5,000 pounds or more, ten cents [10¢] a pound for all such excesses.

When a person is apprehended operating or causing to be operated a vehicle or combination of vehicles on any public highway in the state of Indiana with a weight in excess of the limitations set out in Section 8, said vehicle or combination of vehicles shall be impounded and kept within the custody of the officer apprehending such vehicle or combination of vehicles and to be moved only as directed by said officer; and such officer shall cause said truck to be kept impounded until its weight is so reduced as to comply with the limitations expressed in section 8 and until all fines and costs levied on the basis of such excess weight are paid or stayed, and any person so apprehended who shall move said vehicle or combination of vehicles or cause the same to be moved, after the same is impounded by said officer, other than as expressly directed by said officer, shall be subject to be charged with a felony and upon conviction shall be subject to a fine of not less than $500 nor more than $1,000 to which may be added imprisonment in the Indiana state reformatory or state prison for a period of not less than one [1] nor more than five [5] years.

Indiana Acts of 1953, c. 183:

SECTION 1. Section 2 of the above entitled act is amended to read as follows: Sec. 2. Section 3 of the second above entitled act is amended to read as follows: Sec. 3. That the first above entitled act be amended by inserting therein a new section to be numbered section 8A and to read as follows: Sec. 8A. Any person who operates or causes to be operated any vehicle or

combination of vehicles having a weight in excess of one or more of the limitations set out in section 8 shall be guilty of a misdemeanor and on conviction shall be fined in the sum of five dollars, and shall in addition be assessed the following civil penalties:

(1) If the total of all excesses of weight under one or more of the limitations in section 8 is less than 1,000 pounds, no penalty.

(2) If the total of all excesses of weight under one or more of the limitations in section 8 is less than 2,000 pounds and more than 1,000 pounds, two cents a pound for each pound over 1,000 pounds.

(3) If the total of all excesses of weight under one or more of the limitations in section 8 is 3,000 pounds or less and more than 2,000 pounds, four cents a pound for all such excesses.

(4) If the total of all excesses of weight under one or more of the limitations in section 8 is 4,000 pounds or less and more than 3,000 pounds, six cents a pound for all such excesses.

(5) If the total of all excesses of weight under one or more of the limitations in section 8 is 4,000 pounds or more and less than 5,000 pounds, eight cents a pound for all such excesses.

(6) If the total of all excesses of weight under one or more of the limitations in section 8 is 5,000 pounds or more, ten cents a pound for all such excesses.

All civil penalties so assessed shall be collected and deposited to the credit of the motor vehicle highway account. In the event any civil penalty is not paid the prosecuting attorney of the judicial circuit in which the action is pending is authorized to bring an action in the name of the state of Indiana to enforce the collection of the same.

When a person is apprehended operating or causing to be operated a vehicle or combination of vehicles on any public highway in the State

of Indiana with a weight in excess of the limitations set out in section 8, said vehicle or combination of vehicles shall be impounded and kept within the custody of the officer apprehending such vehicle or combination of vehicles and to be moved only as directed by said officer; and such officer shall cause said truck to be kept impounded until its weight is so reduced as to comply with the limitations expressed in section 8 and until all fines and costs levied on the basis of such excess weight are paid or stayed, and any person so apprehended who shall move said vehicle or combination of vehicles or cause the same to be moved, after the same is impounded by said officer, other than as expressly directed by said officer, shall be subject to be charged with a felony and upon conviction shall be subject to a fine of not less than $500 nor more than $1,000 to which may be added imprisonment in the Indiana State Reformatory or State Prison for a period of not less than one nor more than five years.

Kentucky Revised Statutes (1953):

189.221 *Basic height, width, length and weight limits for trucks and semi-trailer trucks.* No person shall operate on any highway, except such highways as may be designated by the Commissioner of Highways under the provisions of KRS 189.222, any of the following vehicles:

* * * * * *

(4) Any truck or semi-trailer truck which exceeds 18,000 pounds gross weight, including load, or 600 pounds per inch of the combined width of the tires upon which such vehicle may be propelled.

189.222 *Increased height, length and weight limits on designated highways.* The Commissioner of Highways, in respect to highways which are a part of the state-maintained system, by official order, may increase on desig-

nated highways or portions thereof, the maximum height, length and gross weight prescribed in KRS 189.221, if in the opinion of said commissioner, the increased height, length and weight designated by him are justified by the strength, safety and durability of the designated highways, and said highways do not appear susceptible to unreasonable and unusual damage by reason of such increases; and said commissioner is authorized to establish reasonable classifications of such roads and to fix a different maximum for each classification. However, in no event shall any motor truck or semi-trailer truck, including any part of the body or load, exceed the following dimensions and weights:

* * * * * *

(3) Weight, 18,000 pounds per single axle, with axles less than 42 inches apart to be considered as a single axle; 600 pounds per inch of aggregate width of all tires; gross weight, 42,000 pounds.

189.226 *Violations of KRS 189.221 to 189.228, what constitute.* Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of, any act declared by KRS 189.221 to 189.228 to be a crime, whether individually or in connection with one or more other persons or as a principal, agent, or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, permits, assists, or directs another to violate any provision of KRS 189.221 to 189.228 is likewise guilty of such offense.

189.270 *Special permit to exceed weight, height, width or length limits.* (1) The department may prescribe, by orders of general application, rules and regulations for the issuance by it of permits for the operation of motor trucks, tractors, semi-trailers and trailers,

whose gross weight including load, height, width or length exceeds the limits prescribed by this chapter or which in other respects fail to comply with the requirements of this chapter. Permits may be issued by the department for stated periods, special purposes and unusual conditions, and upon such terms in the interest of public safety and the preservation of the highways as the department may, in its discretion, require. The department shall require, as a condition to the issuance of the permit, that the applicant pay a reasonable fee, to be fixed by it, and may require that the applicant give bond, with approved surety, to indemnify the state or counties against damage to highways or bridges resulting from use by the applicant. The operation of motor trucks, tractors, semi-trailers or trailers, in accordance with the terms of any such permit shall not constitute a violation of this chapter if the operator has the permit, or a copy of it, authenticated as the department may require, in his possession.

(2) No person shall operate any motor truck, tractor, semi-trailer or trailer, in violation of the terms of the permit.

189.670 *Public policy as to trucks declared.* It is hereby declared to be the public policy of this state that heavy motor trucks, alone or in combination with other vehicles, increase the cost of highway construction and maintenance, interfere with and limit the use of highways for normal traffic thereon, and endanger the safety and lives of the traveling public, and that the regulations embodied in this chapter with respect to motor trucks, semi-trailer trucks and semi-trailers are necessary to achieve economy in highway costs, and to permit the highways to be used freely and safely by the traveling public.

189.990 *Penalties.* * * *

(2) (a) Any person who violates the weight

provisions of KRS 189.221 or 189.222 shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in an amount equal to two cents per pound for each pound of excess load when the excess is 2,000 pounds or less, three cents per pound when the excess exceeds 2,000 pounds and is 3,000 pounds or less, five cents per pound when the excess exceeds 3,000 pounds and is 4,000 pounds or less, seven cents per pound when the excess exceeds 4,000 pounds and is 5,000 pounds or less, and nine cents per pound when the excess exceeds 5,000 pounds but in no case to exceed $500.

(b) Any person who violates any provision of * * * KRS * * * 189.270 * * * for which another penalty is not specifically provided, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding $500.

* * * * *

2 Flack's Annotated Code of Maryland (1951). Article 66½:

278. (Weights of Vehicles and Loads.) (a) No axle load shall exceed 22,400 pounds, but with respect to any vehicle containing coupled axles the load for each of such coupled axles shall not exceed 20,000 pounds; and with respect to any vehicle containing coupled axles spaced less than 48 inches apart measured horizontally between their center lines, the load for each of such coupled axles shall not exceed eighteen thousand (18,000) pounds.

(b) No vehicle or combination of vehicles shall have a gross weight in pounds, including the load, in excess of that derived from the formula 850 times (L plus 40) in which L shall be the distance in feet measured horizontally between the center lines of the first and the last axles of the vehicle or combination of vehicles.

(c) The gross weight of any motor vehicle

or combination of vehicles may not exceed 65,000 pounds. The provisions of sub-section (b) of this section shall be in force and effect until June 1, 1953, at which time it shall cease to be law.

(d) It shall be unlawful and constitute a misdemeanor for all any or each or any combination of the following, that is, person, firm or corporation, co-partnership or association or the agent or servant of any person, firm or corporation, co-partnership or association, or owner, lessee, operator or driver of any vehicle, commercial vehicle, tractor-trailer, semi-trailer, trailer, or combination thereof, to operate on a public highway any of the above vehicles having a gross weight in excess of the maximum registered weight as indicated on the certificate of registration issued pursuant to Section 80 of this Article or any statutory weight limit allowed under the provisions of this Article, or Article 89B.

(e) A violation of any of the sub-sections of this section or of any section in this Article or Article 89B shall be considered as separate and distinct violations; provided, however, that for a violation of the sections pertaining to the weights of vehicles, the violation constituting the greatest excess of weight over the limits imposed in each instance shall be the only violation for which the fine shall be imposed.

(f) Any officer of the Maryland State Police, member of an authorized weighing crew of the State Roads Commission or peace officer empowered with the right to enforce the provisions of this Article or Article 89B having reason to believe that the size or weight of a vehicle and load being operated on a public highway is unlawful is authorized to require the driver to stop and submit to a measurement or weighing, or both, of the vehicles by means of either portable or stationary scales.

(g) The Trial Magistrate upon the conviction for a violation of any of the provisions of this section, Section 80 and Article 89B shall impose the following fines:

(1) For a weight violation of less than 5,000 pounds over the registered weight or any statutory weight limit, a fine of 2 cents for every pound of excess weight shall be imposed.

(2) For a weight violation in excess of 5,000 pounds over the registered weight or any statutory weight limit a fine of 6 cents for every pound of excess weight shall be imposed.

(h) The Trial Magistrate, upon the conviction for a violation of any of the provisions relating to the weight of a vehicle, shall not have power to suspend or reduce the fine.

(i) If the vehicle being operated in violation of the provisions of this section, Article 66½ or Article 89B is registered outside of Maryland or the person responsible for said violation or the person operating the vehicle is a non-resident of the State of Marland, the Trial Magistrate may (1) proceed as set forth in Sections 283 and 302 of this Article as to the person, or (2) impound the said vehicle until such time as the fine is paid or acceptable collateral posted. The impounding of the vehicle does not include the cargo and said cargo shall not be held. If after 90 days from the date the vehicle was impounded, the fine has not been paid or acceptable collateral posted, said vehicle may be sold at public auction under the jurisdiction of the Court to satisfy the fine, accrued interest and costs.

(j) Whenever upon measuring or weighing of a vehicle and load, the vehicle is found to be in violation of the law, said vehicle must be unloaded until the vehicle complies with the applicable law, before the vehicle can be moved and all material or cargo so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator:

provided, however, on first offense by a person operating a vehicle which has an indivisible load, the vehicle may be allowed to proceed after obtaining a permit from the State Roads Commission, but on second or subsequent offense, the vehicle carrying the indivisible load must return to the place of entry or origin in the State after obtaining a permit from the State Roads Commission to do so; and provided, further, that a vehicle violating the law and carrying as its full load perishable products shall for first offense only by the person operating the vehicle be allowed to proceed to the destination, but for a second or subsequent offense within any one calendar year, said products must be unloaded before the vehicle can be moved.

(k) If the driver of a vehicle sought to be weighed or measured shall refuse to stop upon the proper order or to drive the vehicle upon the scales as directed by an authorized officer, as empowered in this section, said driver shall be subject to a fine of $1,000.00. The Trial Magistrate finding a driver guilty of violating this section shall not have power to suspend the fine or imprisonment.

(l). In all complaints of the violation of any of the provisions of the law relating to truck weights, the Trial Magistrate, Justice of the Peace, Committing Magistrate, Police Justice or Justice of the Peace of the Traffic Court of Baltimore City before whom the alleged offender is taken shall have jurisdiction to hear and determine such complaint and impose the fine herein prescribed, but if either party shall feel aggrieved by his judgment, there shall be a right of appeal within ten days to the Court of Criminal Jurisdiction of any County if the trial is in the County, or the Criminal Court of Baltimore City if trial is in Baltimore City and such Court on appeal hear the case de novo. A written order of appeal shall be filed with

the Trial Magistrate by whom the judgment has been imposed. Upon the appeal being prayed as aforesaid, it shall be the duty of the Trial Magistrate to endorse upon the prayers "Appeal Prayed" and transmit the same to the proper Court."

6 Mississippi Code Annotated (1942), Title 30:

§ 8264. *Scope and effect of article.*—(a) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this article or otherwise in violation of this article, and the maximum size and weight of vehicles herein specified shall be lawful throughout this State, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this article.

* * * * *

§ 8270. *Wheel and axle loads.*—(a) The gross weight upon any wheel of a vehicle shall not exceed the following:

1. When the wheel is equipped with a high-pressure pneumatic, solid rubber or cushion tire, 8,000 pounds.

(2) When the wheel is equipped with a low-pressure pneumatic tire, 9,000 pounds.

(b) The gross weight upon any one axle of a vehicle shall not exceed the following:

1. When the wheels attached to said axle are equipped with high-pressure pneumatic, solid rubber or cushion tires, 16,000 pounds.

2. When the wheels attached to said axle are equipped with low-pressure pneumatic tires, 18,000 pounds.

(c) For the purposes of this section an axle load shall be defined as the total load on all wheels whose centers are included within two parallel transverse vertical planes not more than forty inches apart.

(d) For the purposes of this section every pneumatic tire designed for use and used when inflated with air to less than 100 pounds pressure shall be deemed a low-pressure pneumatic tire and every pneumatic tire inflated to 100 pounds pressure or more shall be deemed a high-pressure pneumatic tire.

§ 8271. *Gross weight of vehicles and loads.*—(a) No vehicle or combination of vehicles shall be moved or operated on any highway or bridge when the gross weight thereof exceeds the limits specified below.

1. The gross weight upon any one axle of a vehicle shall not exceed the limits prescribed in Section 145 [§ 8270, supra] of this Act.

2. Subject to the limitations prescribed in Section 146 [this section] of this Act, the gross weight of any vehicle, having two axles, shall not exceed 22,000 pounds; provided, however, that in an emergency any motor vehicle may carry an overload of not exceeding ten per cent. of said gross weight limit, when such vehicle is equipped with at least six, low-pressure tires, each of which is not less than nine and one-half inches in width.

3. Subject to the limitations prescribed in Section 145 [§ 8270, supra] of this Act the gross weight of any single vehicle having three or more axles shall not exceed 30,000 pounds.

4. Subject to the limitations prescribed in Section 145 [§ 8270, supra] of this Act the gross weight of any combination of vehicles shall not exceed 30,000 pounds.

(b) The State Auditor and county sheriffs, upon registering any vehicle under the laws of this State which vehicle is designed and used primarily for the transportation of property or for the transportation of ten or more persons, may require such information and may make such investigation or test as necessary to enable them to determine whether such vehicle may safely be operated upon the highways in com-

pliance with all the provisions of this Act. They shall register every such vehicle for a permissible gross weight not exceeding the limitations set forth in this Act. * * *

* * * * *

§ 8272. *Officers may weigh vehicles and require removal of excess loads.*—(a) Any police officer having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the same either by means of portable or stationary scales and may require that such vehicle be driven to the nearest public scales in the event such scales are within two miles.

(b) Whenever an officer upon weighing a vehicle and load, as above provided, determines that the weight is unlawful, such officer may require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as permitted under this Act. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

(c) Any driver of a vehicle who fails or refuses to stop and submit the vehicle and load to a weighing, or who fails or refuses when directed by an officer upon weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section, shall be guilty of a misdemeanor.

§ 8273. *Permits for excess size and weight.*—(a) The State Highway Commission with respect to highways under its jurisdiction, and local authorities with respect to highways under their jurisdiction may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size

or weight of vehicle or load exceeding the maximum specified in this Act or otherwise not in conformity with the provisions of this Act upon any highway under the jurisdiction of the party granting such permit and for the maintenance of which said party is responsible.

(b) The application for any such permit shall specifically describe the general operation and load to be moved, and the particular highways for which the permit to operate is requested, and whether such permit is requested for a single trip, or for continuous operation.

(c) The State Highway Commission or local authority is authorized to issue or withhold such permit at its discretion; or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces or structures, and may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(d) Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of any authority granting such permit, and no person shall violate any of the terms or conditions of such special permit. Provided, however, that permits covering the number of vehicles anticipated in any operation may be issued by the Commission.

§ 8275. *Penalties for misdemeanor.*—(a) It is a misdemeanor for any person to violate any of the provisions of this Act unless such violation is by this Act or other law of this State declared to be a felony.

(b) Every person convicted of a misdemeanor

for a violation of any of the provisions of this Act for which another penalty is not provided shall for first conviction thereof be punished by a fine of not more than $100.00 or by imprisonment for not more than ten days; for a second such conviction within one year thereafter such person shall be punished by a fine of not more than $200.00 or by imprisonment for not more than twenty days or by both such fine and imprisonment; upon a third or subsequent conviction within one year after the first conviction such person shall be punished by a fine of not more than $500.00 or by imprisonment for not more than six months or by both such fine and imprisonment.

16 Vernon's Annotated Missouri Statutes, Title 19:

304.180. *Regulations as to weight—axle load defined*

1. No motor-drawn or propelled vehicle, or combinations thereof, shall be moved or operated on the highways of this state when the gross weight thereof, in pounds shall exceed the weight computed by multiplying the distance in feet between the first and last axles of such vehicles, or combinations of such vehicles plus forty by seven hundred; nor shall the total gross weight, with load on any group of axles of a vehicle or combination of vehicles where the distance between the first and last axles of the group is eighteen feet or less exceed the weight, in pounds, computed by multiplying the distance in feet between the first and last axles of such group under consideration plus forty by six hundred fifty. No vehicle or combination of vehicles shall be moved or operated on any highway in this state having a greater weight than sixteen thousand pounds on one axle when the wheels attached to said axle are equipped with high pressure pneumatic, solid rubber or cushioned tires, and no vehicle or combination

of vehicles shall be moved or operated on the highways of this state having a greater weight than eighteen thousand pounds on one axle when the wheels attached to said axle are equipped with low pressure pneumatic tires, and no vehicle shall be moved or operated on the highways of this state having a load of over six hundred pounds per inch width of tire upon any wheel concentrated on the surface of the highway, the width in the case of rubber tires, both solid and pneumatic, to be measured between the flanges of the rim.

* * * * *

304.190 *Size and weight regulations (cities of 75,000 or more)*

1. No motor vehicle operating exclusively within the corporate limits of cities containing seventy-five thousand inhabitants or more or within two miles of the corporate limits of such city shall exceed one hundred eight inches in width, fifteen feet in height, thirty-five feet in length and forty-five feet in length when in combination of such vehicles coupled together including coupling.

2. No motor vehicle operating exclusively within any said area, except a combination of tractor and semitrailer, the gross weight of which, including load is more than twenty-eight thousand pounds, and no combination of tractor and semitrailer, the gross weight of which, including load, is more than forty-two thousand pounds, and no motor vehicle having a greater weight than twenty-two thousand four hundred pounds on one axle, and no motor vehicle having a load of over eight hundred pounds per inch width of tire upon any wheel concentrated upon the highway shall be operated on the highways within such cities. The width in case of rubber tires both solid and pneumatic shall be measured between the

flanges of the rim and a combination of tractor and semitrailer shall be considered a vehicle of six wheels for the purpose of computing the distribution of the load.

304.200. *Special permits for overloads*

1. The chief engineer of the state highway department, whenever in his opinion the public safety or public interest so justifies, may issue special permits for vehicles exceding the limitations on width, length, height and weight herein specified. Such permits shall be issued only for a single trip or for a definite period, not beyond the date of expiration of the vehicle registration and shall designate the highways and bridges which may be used under the authority of such permit.

2. The officer in charge of the maintenance of the streets of any municipality may issue such permits for the use of the streets by such vehicles within the limits of such municipalities.

304.230. *Enforcement of load laws*

1. It shall be the duty of the sheriff of each county or city to see that the provisions of sections 304.170 to 304.240, are enforced and any peace officer or police officer of any county or city shall have the power to arrest on sight or upon a warrant any person found violating or having violated the provisions of said sections.

2. The sheriff or any peace officer is hereby given the power to stop any such conveyance or vehicle as above described upon the public highway for the purpose of determining whether such vehicle is loaded in excess of the provisions of sections 304.170 to 304.240 and if he finds such vehicle loaded in violation of the provisions hereof he shall have a right at that time and place to cause the excess load to be removed from such vehicle; and provided further, that any regularly employed maintenance man of the state highway department shall have

the right and authority in any part of this state to stop any such conveyance or vehicle upon the public highway for the purpose of determining whether such vehicle is loaded in excess of the provisions of sections 304.170 to 304.240, and if he finds such vehicle loaded in violation of the previsions thereof he shall have the right at that time and place to cause the excess load to be removed from such vehicle; and provided further, that the highway commission of this state may deputize and appoint any number of their regularly employed maintenance men to enforce the provisions of said sections, and the maintenance men herein delegated and appointed shall report to the proper officers any violations of sections 304.170 to 304.240, for prosecution by said proper officers.

304.240. *Violation of load law a misdemeanor—penalty*

Any person, firm, corporation, partnership or association violating any of the provisions of sections 304.170 to 304.230, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than five hundred dollars or by imprisonment in a county jail for a term of not exceeding twelve months, or by both such fine and imprisonment.

Act of March 24, 1952, Laws of Missouri (1951), pp. 696, 704–706:

Section 1. *Repealing Sections * * * 304.180, and 304.190, Revised Statutes of Missouri, 1949, and enacting twelve new sections in lieu thereof.*—That sections * * * 304.180, and 304.190, RSMo 1949, be and the same are hereby repealed and that twelve new sections be enacted in lieu thereof, to read as follows:

* * * * *

Section 304.180. *Regulations as to weight—axle load defined.*—1. No vehicle or combination of vehicles shall be moved or operated on any highway in this state having a greater weight than sixteen thousand pounds on one axle when the wheels attached to said axle are equipped with high pressure pneumatic, solid rubber or cushioned tires, and no vehicle or combination of vehicles shall be moved or operated on the highways of this state having a greater weight than eighteen thousand pounds on one axle when the wheels attached to said axle are equipped with low pressure tires, and no vehicle shall be moved or operated on the highways of this state having a load of over six hundred pounds per inch width of tire upon any wheel concentrated on the surface of the highway, the width in the case of rubber tires, both solid and pneumatic, to be measured between the flanges of the rim.

2. An axle load shall be defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle.

3. Subject to the limit upon the weight imposed upon the highway through any one axle, the total gross weight with load imposed upon the highway by any one group of two or more consecutive axles of a vehicle or combination of vehicles shall not exceed the gross weight given for the respective distance between the first and last axle of the total group of axles measured longitudinally to the nearest foot as set forth in the following table:

| *Distance in feet between first and last axles of group* | *Maximum load in pounds on group of axles* |
|---|---|
| 4 | 32,000 |
| 5 | 32,000 |
| 6 | 32,000 |
| 7 | 32,000 |
| 8 | 32,610 |
| 9 | 33,580 |
| 10 | 34,550 |
| 11 | 35,510 |
| 12 | 36,470 |
| 13 | 37,420 |
| 14 | 38,360 |
| 15 | 39,300 |
| 16 | 40,230 |
| 17 | 41,160 |
| 18 | 42,080 |
| 19 | 42,990 |
| 20 | 43,900 |
| 21 | 44,800 |
| 22 | 45,700 |
| 23 | 46,590 |
| 24 | 47,470 |
| 25 | 48,350 |
| 26 | 49,220 |
| 27 | 50,090 |
| 28 | 50,950 |
| 29 | 51,800 |
| 30 | 52,650 |
| 31 | 53,490 |
| 32 | 54,330 |
| 33 | 55,160 |
| 34 | 55,980 |
| 35 | 56,800 |
| 36 | 57,610 |
| 37 | 58,420 |
| 38 | 59,220 |
| 39 or over | 60,010 |

Section 304.190. *Size and weight regulations (cities of 75,000 or more).*—1. No motor vehicle operating exclusively within the corporate limits of cities containing seventy-five thousand inhabitants or more or within two miles of the corporate limits of such city shall exceed one hundred eight inches in width, fifteen feet in height, thirty-five feet in length, or forty-five feet in length when in combination of such ve-

hicles coupled together including coupling; except that motor vehicles transporting passengers for hire within the corporate limits of cities containing three hundred thousand inhabitants or more may be forty feet in length.

2. No motor vehicle operating exclusively within any said area shall have a greater weight than twenty-two thousand four hundred pounds on one axle.

Act of April 15, 1952, Laws of Missouri (1951), pp. 706–707:

Section 1. *Repealing Section 304.240, Revised Statutes of Missouri, 1949, and enacting one new section in lieu thereof.*—That section 304.240, RSMo 1949, be and the same is hereby repealed and that one new section be enacted in lieu thereof, to be known as section 304.240, and to read as follows:

Section 304.240. *Violation of load law a misdemeanor—penalty.*—Any person, firm, corporation, partnership or association violating any of the provisions of sections 304.170 to 304.240 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five dollars or by imprisonment in a county jail for a term of not exceeding twelve months, or by both such fine and imprisonment; provided, however, that where load limits as defined in sections 304.180 to 304.220 have been violated, the fine shall not be less than two cents for each pound of excess weight up to and including five hundred, and five cents for each pound of excess weight above five hundred and not exceeding one thousand, and ten cents for each pound in excess weight above one thousand; provided, that the court may, in its discretion, cause to be impounded the motor vehicle operated by any person violating the provisions of this act until such time as the fine and cost assessed by the court under this act is paid.

39 New Jersey Statutes Annotated (Perm. Ed.):

39:3-84. *Dimensional restrictions; outside width; over-all length; height; weight; overhanging mass; violations; fine or imprisonment*

* * * * *

No commercial motor vehicle, tractor, trailer or semitrailer shall be operated on any highway in this state having a combined weight of vehicle and load of more than (a) thirty thousand pounds in the case of a two-axle four-wheeled vehicle, (b) forty thousand pounds in the case of a three-axle six-wheeled vehicle, (c) sixty thousand pounds in the case of a tractor and semitrailer combination, and (d) sixty thousand pounds in the case of a truck and trailer combination.

* * * * *

A person violating this section shall be subject to a fine not exceeding one hundred dollars. In default of the payment thereof imprisonment in the county jail for a period not exceeding ten days shall be imposed.

* * * * *

5 Page's Ohio General Code Annotated (1952 Cum. Pocket Supp.):

SEC. 7248-1. *Maximum axle load, wheel load, and gross weights permitted.*

No [illegible]hicle, trackless trolley, load, object or structure shall be operated or moved upon the improved public highways and streets, bridges or culverts within this state, having a maximum axle load greater than sixteen thousand pounds when such vehicle is equipped with solid rubber tires, or greater than nineteen thousand pounds when such vehicle is equipped with pneumatic tires. The maximum wheel load of any one wheel of any such vehicle shall not exceed six hundred and fifty pounds per inch width of tire measured as prescribed by law, nor shall any

solid tire of rubber or other resilient material on any wheel of any such vehicle be less than one inch thick when measured from the top of the flanges of the tire channel.

The weight of vehicle and load imposed upon the road surface by any two successive axles, spaced four feet or less apart, shall not exceed, for solid tires, nineteen thousand pounds, nor exceed for pneumatic tires, twenty-four thousand pounds; or by any two successive axles, spaced more than four feet but less than eight feet apart, shall not exceed for solid tires, twenty-four thousand pounds, nor exceed, for pneumatic tires, thirty-one thousand five hundred pounds; or by any two successive axles, spaced eight feet or more apart, shall not exceed, for solid rubber tires, twenty-eight thousand pounds, nor exceed for pneumatic tires, thirty-eight thousand pounds; nor shall the total weight of vehicle and load exceed, for solid rubber tires, twenty-eight thousand pounds plus an additional six hundred pounds for each foot or fraction thereof spacing between the front axle and the rearmost axle of the vehicle, nor exceed, for pneumatic tires, thirty-eight thousand pounds plus an additional eight hundred pounds for each foot of spacing between the front axle and the rearmost axle of the vehicle; nor shall the weight of vehicle and load imposed upon the road surface by any vehicle exceed, for pneumatic tires seventy-eight thousand pounds; nor shall such weight of vehicle and load exceed, for solid tires, eighty per cent of the permissible weight of vehicle and load as provided for pneumatic tires. In this section the word vehicle shall mean any single vehicle when not in combination, or any combination of vehicles, as defined in section 6290 of the General Code.

Sec. 7250-1. *Penalty for violation.*

Whoever violates the weight provisions of sections 7246 to 7250, inclusive, of the General

Code of Ohio shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined twenty-five dollars for the first two thousand pounds, or fraction thereof, of overload; for overloads in excess of two thousand pounds but not in excess of five thousand pounds he shall be fined twenty-five dollars and in addition thereto one dollar per one hundred pounds of overload; for overloads in excess of five thousand pounds, but not in excess of ten thousand pounds, he shall be fined twenty-five dollars and in addition thereto two dollars per one hundred pounds of overload, or imprisoned in the county jail or workhouse not more than thirty days, or both. For all overloads in excess of ten thousand pounds he shall be fined twenty-five dollars and in addition thereto three dollars per one hundred pounds of overload, or imprisoned in the county jail or workhouse not more than thirty days, or both; provided, however, that whoever violates the weight provisions of vehicle and load relating to gross load limits shall be fined not less than one hundred dollars. Whoever violates any other provisions of sections 7246 to 7250, inclusive, of the General Cod of Ohio shall be deemed guilty of a misdemeanor and upon conviction thereof shall, for the first offense, be fined not more than twenty-five dollars; and for the second offense within one year thereafter, not less than ten dollars nor more than one hundred dollars, or imprisoned in the county jail or workhouse not more than ten days, or both; and for a third or subsequent offense within one year after the first offense shall be fined not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail or workhouse not more than thirty days, or both.

Page's Ohio Revised Code Annotated, Title 55:

§ 5577.02 Operation of vehicle on highways in excess of prescribed weights forbidden. (GC § 7246)

No trackless trolley, traction engine, steam roller, or other vehicle, load, object, or structure, whether propelled by muscular or motor power, not including vehicles run upon stationary rails or tracks, fire engines, fire trucks, or other vehicles or apparatus belonging to or used by any municipal or volunteer fire department in the discharge of its functions, shall be operated or moved over or upon the improved public streets, highways, bridges, or culverts in this state, upon wheels, rollers, or otherwise, weighing in excess of the weights prescribed in sections 5577.01 to 5577.14, inclusive, of the Revised Code, including the weight of vehicle, object, structure, or contrivance and load, except upon special permission, granted as provided by section 4513.34 of the Revised Code.

§ 5577.03 Weight of load; width of tire. (GC § 7248)

No person, firm, or corporation shall transport over the improved public streets, alleys, intercounty highways, state highways, bridges, or culverts, in any vehicle propelled by muscular, motor, or other power, any burden, including weight of vehicle and load, greater than the following:

(A) (1) In vehicles having metal tires three inches or less in width, a load of five hundred pounds for each inch of the total width of tire on all wheels;

(2) When the tires on such vehicles exceed three inches in width, an additional load of eight hundred pounds shall be permitted for each inch by which the total width of the tires on all wheels exceeds twelve inches.

(B) In vehicles having tires of rubber or other similar substances, for each inch of the total width of tires on all wheels, as follows:

(1) For tires three inches in width, a load of four hundred fifty pounds;

(2) For tires three and one-half inches in width, a load of four hundred fifty pounds;

(3) For tires four inches in width, a load of five hundred pounds;

(4) For tires five inches in width, a load of six hundred pounds;

(5) For tires six inches and over in width, a load of six hundred fifty pounds.

The total width of tires on all wheels shall be, in case of solid tires of rubber or other similar substance, the actual width in inches of all such tires between the flanges at the base of the tires, but in no event shall that portion of the tire coming in contact with the road surface be less than two thirds the width so measured between the flanges.

In the case of pneumatic tires, of rubber or other similar substance, the total width of tires on all wheels shall be the actual width of all such tires, measured at the widest portion thereof when inflated and not bearing a load.

In no event shall the load, including the proportionate weight of vehicle that can be concentrated on any wheel, exceed six hundred fifty pounds to each inch in width of the tread as defined in this section for solid tires, or each inch in the actual diameter of pneumatic tires measured when inflated and not bearing a load.

§ 5577.04 Maximum axle load, wheel load, and gross weights. (GC § 7248-1)

No vehicle, trackless trolley, load, object, or structure having a maximum axle load greater than sixteen thousand pounds when such vehicle is equipped with solid rubber tires, or greater than nineteen thousand pounds when such vehicle is equipped with pneumatic tires, shall be operated or moved upon improved public highways, streets, bridges, or culverts. The maximum wheel load of any one wheel of any such vehicle shall not exceed six hundred fifty pounds per inch width of tire, measured as prescribed by section 5577.03 of the Revised Code, nor shall any solid tire or rubber or other resilient material, on any wheel of any such

vehicle, be less than one inch thick when measured from the top of the flanges of the tire channel.

The weight of vehicle and load imposed upon the road surface by any two successive axles, spaced four feet or less apart, shall not exceed nineteen thousand pounds for solid tires, nor twenty-four thousand pounds for pneumatic tires; or by any two successive axles, spaced more than four feet but less than eight feet apart, shall not exceed twenty-four thousand pounds for solid tires, nor thirty-one thousand five hundred pounds for pneumatic tires; or by any two successive axles, spaced eight feet or more apart, shall not exceed twenty-eight thousand pounds for solid tires, nor thirty-eight thousand pounds for pneumatic tires; nor shall the total weight of vehicle and load exceed, for solid rubber tires, twenty-eight thousand pounds plus an additional six hundred pounds for each foot or fraction thereof of spacing between the front axle and the rearmost axle of the vehicle, nor exceed thirty-eight thousand pounds plus an additional eight hundred pounds for each foot of spacing between the front axle and the rearmost axle of the vehicle for pneumatic tires; nor shall the weight of vehicle and load imposed upon the road surface by any vehicle exceed seventy-eight thousand pounds for pneumatic tires; nor shall such weight of vehicle and load exceed, for solid tires, eighty per cent of the permissible weight of vehicle and load, as provided for pneumatic tires.

§ 5577.99 Penalties. (GC §7250-1)

(A) Whoever violates the weight provisions of sections 5577.01 to 5577.09, inclusive, of the Revised Code shall be fined twenty-five dollars for the first two thousand pounds, or fraction thereof, of overload; for overloads in excess of two thousand pounds, but not in excess of five thousand pounds, such person shall be fined twenty-five dollars, and in addition thereto one

dollar per one hundred pounds of overload; for overloads in excess of five thousand pounds, but not in excess of ten thousand pounds, such person shall be fined twenty-five dollars and in addition thereto two dollars per one hundred pounds of overload, or imprisoned not more than thirty days, or both. For all overloads in excess of ten thousand pounds such person shall be fined twenty-five dollars, and in addition thereto three dollars per one hundred pounds of overload, or imprisoned not more than thirty days, or both. Whoever violates the weight provisions of vehicle and load relating to gross load limits shall be fined not less than one hundred dollars.

(B) Whoever violates any other provision of sections 5577.01 to 5577.09, inclusive, of the Revised Code shall be fined not more than twenty-five dollars for a first offense; for a second offense within one year thereafter, such person shall be fined not less than ten nor more than one hundred dollars, or imprisoned not more than ten days, or both; for a subsequent offense within one year after the first offense, such person shall be fined not less than twenty-five nor more than two hundred dollars, or imprisoned not more than thirty days, or both.

* * * * *

75 Purdon's Pennsylvania Statutes Annotated, Vehicle Code:

§ 453. *Weight of vehicles and loads*

* * * * *

(g) No truck tractor and semi-trailer combined, except fire department equipment, shall be operated upon any highway with a gross weight in excess of forty-five thousand (45,000) pounds, or in excess of twenty thousand (20,000) pounds on any axle, or in excess of eight hundred (800) pounds on any one wheel for each nominal inch of width of tire on such

wheel; axle or axles of semi-trailer shall be not less than ninety-six (96) inches from the axle of the truck tractor.

* * * * *

*Penalty.*—Any person operating any vehicle or combination of vehicles upon any highway with a gross weight or with weight on any one axle or wheel exceeding by more than five (5) percentum the maximum weight allowed in that particular case and not exceeding by more than ten (10) per centum the maximum weight allowed, shall in each case, upon summary conviction before a magistrate, be sentenced to pay a fine of twenty-five ($25) dollars and costs of prosecution, and in default of the payment thereof, shall undergo imprisonment for not more than five (5) days, and any person operating any vehicle or combination of vehicles on any highway with a gross weight or with weight on any one axle or wheel exceeding by more than ten (10) per centum the maximum weight allowed in that particular case, shall in each case, upon summary conviction before a magistrate, be sentenced to pay a fine of fifty ($50) dollars and costs of prosecution, and in default of the payment thereof, shall undergo imprisonment for not more than ten (10) days.

§ 454. *Officers may weigh vehicles and require removal of excess load*

Any peace officer who shall be in uniform, and shall exhibit his badge or other sign of authority, having reason to believe that the weight of a vehicle or combination of vehicles and load is unlawful, is authorized to weigh the same, either by means of portable or stationary scales, or may require that such vehicle or combination of vehicles be driven to the nearest stationary scales in the event such scales are within a distance of two (2) miles. The peace officer may then require the operator to unload immediately such portion of the load as may be necessary to

decrease the gross weight of such vehicle or combination of vehicles to the maximum gross weight specified in this act, except as herein provided for special permits: And further provided, That no arrests shall be made, or information brought in cases where the maximum gross weights provided in this act are not exceeded by more than five (5) per centum thereof.

*Penalty.*—Any person refusing to unload excess weight when so ordered or violating any of the other provisions of this section, shall, upon summary conviction before a magistrate, be sentenced to pay a fine of fifty ($50) dollars and costs of prosecution, and, in default of the payment thereof, shall undergo imprisonment for not more than five (5) days.

§ 455. *Permits for excessive size and weight.*

(a) The Secretary of Highways of this Commonwealth, and local authorities in their respective jurisdictions, may, in their discretion, upon application in writing accompanied by the fee provided in this act, and good cause being shown therefor, issue a special permit, in writing, authorizing the applicant to operate or move either a vehicle or combination of vehicles, or a vehicle and load, or a combination of vehicles and their load or loads, of a size or weight exceeding the maximum specified in this act upon any highway under the jurisdiction of and for the maintenance of which the authorities granting the permit are responsible. When a permit has been issued by the Secretary of Highways, no other authorities shall require any further or additional permit for any portion of the route specified therein. Every such permit shall be issued for a single trip, and shall designate the route to be traversed, subject to such rules, regulations, restrictions, or conditions, as shall be deemed necessary by the authority granting such permit: Provided, That, upon request included in the

application, a combination permit may be issued for a single continuous round trip, whether or not a load or loads may be transported for the entire trip, but no substantial increase in the size or weight of vehicle or combination of vehicles or of load shall be made between intermediate points without supplemental permit. The Secretary of Highways may, in his discretion, issue a single permit for any fixed number of movements across the highway of vehicles or combinations thereof exceeding the maximum size or weight specified in this act at specified locations. Whenever any such permit shall have been issued for crossing the highway, it shall be unlawful to move said vehicles along the highway. The movement of any vehicle or load requiring a permit shall impose the obligation on the permittee to restore or replace any section of highway or bridge damaged as a result of such movement, whether or not such damage may be attributable to negligence on the part of the permittee. Every such permit shall be carried in the vehicle to which it refers, and shall be open to inspection by any peace officer or employee of the Department of Highways of this Commonwealth or to any person having collision with or suffering injury from such vehicle.

(b) In the event of a catastrophe or accident affecting the public safety or convenience, it shall be lawful to operate or move a vehicle of a size or weight in excess of that permitted by this act, if a report thereof is immediately made, in writing, to the Secretary of Highways of this Commonwealth or local authorities. In such cases, a permit shall issue subsequent to the movement.

*Penalty.*—Any person operating or moving a vehicle or load of a size or weight exceeding the maximum specified in this act, without first hav-

ing obtained a permit or permits so to do, and any person altering or forging a special permit for excessive size and weight, or presenting or exhibiting an altered or forged special permit for excessive size and weight, shall, upon summary conviction before a magistrate, be sentenced to pay a fine of fifty ($50) dollars and costs of prosecution, and, in default of the payment thereof, shall undergo imprisonment for not more than ten (10) days.

2 Williams, Tennessee Code Annotated (1934):

1166.36. *Penalty for violation.*—Any person, firm or corporation owning or operating any freight motor vehicle over the roads of this state with a greater gross weight than that authorized by the registration thereof shall be compelled to register such freight motor vehicle in the class within which its then weight shall fall, which registration shall not be taken for a less period of time than one year, and shall further be required to pay a penalty of twenty (20) per centum of the amount of the registration fee in the class within which its then weight shall fall; it shall be the duty of the county court clerk to collect said penalty of twenty (20) per centum at the same time said new registration is made, and to remit said penalty to the department of finance and taxation as other motor vehicle registration funds are remitted; no officer shall be authorized to relieve, release or waive said twenty (20) per centum penalty or any part thereof; in computing the amount of registration fee due in each case, the person so registering said vehicle shall be credited with the amount of registration fee paid for the class in which he has registered such truck; provided, however, that the penalty of twenty (20) per centum hereinabove provided shall be computed upon the gross

amount of the larger fee, and not upon the difference between the registration fees in the higher class and lower class.

Any person, firm or corporation owning or operating any freight motor vehicle over the roads of this state in excess of the maximum limits herein provided or with a greater gross weight than that authorized by the registration thereof shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than $25.00 or more than $300.00.

It shall be the duty of the driver of any freight motor vehicle licensed under this act to carry in said vehicle at all times a duplicate of the registration certificate for said vehicle, which duplicate certificate shall be available for inspection by employees and agents of the department of finance and taxation, members of the Tennessee highway patrol, or other peace officers. Any person failing to have in his possession such certificate or refusing to furnish same for inspection, as required by this paragraph, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $2.50 nor more than $50.00.

No vehicle found to be loaded in excess of the maximum weight provided under the class in which the same has been registered shall be taken from the charge and custody of the arresting officer until the fine imposed by this act upon conviction shall have been paid or secured, nor until the registration fees provided by this act shall have been paid and the proper identification tags affixed to such vehicle; provided further that no such vehicle found to have gross weight in excess of the maximum prescribed by law shall be permitted to con-

time on its way until the weight thereof is reduced to the lawful limit.

* * * * *

2 Williams, Tennessee Code Annotated (1952 Cum. Pocket Supp.):

1166.33. *Maximum weight allowed; former act unrepealed.*—No freight motor vehicle as herein defined shall be operated upon the highways, roads, streets and other public thoroughfares of this state while carrying gross weight amounting to an axle load in excess of 18,000 pounds per axle; an axle load being hereby defined as the total load upon all wheels whose centers may be included between two parallel transverse planes 40 inches apart.

Subject to the limitation upon axle load set forth above, no freight motor vehicle shall be operated on or across any bridge in this state when the gross weight of said vehicle exceeds that given by the formula: W = C times (L plus 40) where W = total gross weight in pounds, C = 700, and L = the distance in feet between the first and last axles of a vehicle or combination of vehicles.

Provided further, that no freight motor vehicles as herein defined shall be operated upon the highways, roads, streets and other public thoroughfares of this state while carrying gross weight in excess of 42,000 pounds.

Freight motor vehicle, as used in this section, includes both the tractor or truck and the trailer, semi-trailer or trailers, if any, and the weight of any such combination shall not exceed the maximum fixed herein. * * *

1166.34. *Permit for excess weight; reduction of maximum weight; signs indicating max-*

*imum weight.*—The commissioner of safety shall have the authority to grant special permits for the occasional movements of freight motor vehicles carrying gross weights in excess of the gross weights set forth in the preceding section of this act. The commissioner of highways and public works shall have the authority to reduce the maximum gross weight of freight motor vehicles operating over lateral highways and secondary roads where through weakness of structure in either the surface of or the bridges over such lateral highways or secondary roads, the maximum loads provided by law, in the opinion of the commissioner, injure or damage such roads or bridges.

Williams, Tennessee Code Annotated (1954 Supp., Vol. 3):

"2715.2. *Maximum weight allowed.*—Except as otherwise provided by law, no freight motor vehicle, as defined in Code section 2680.2 [Williams Code § 5538.1], shall be operated over, on, or upon the public highways of this state where the total weight on a single axle, or any group of axles, exceeds the weight limitations set forth below in subsections A, B, C, D, E and F.

A. No axle shall carry a load in excess of 18,000 pounds.

An axle load as set out herein is defined as the total load transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes, 40 inches apart, extending across the full width of the vehicle.

B. No group of axles shall carry a load in pounds in excess of the value set forth in the following table corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot:

| *Distance in feet between first and last axles of group* | *Maximum load in pounds on group of axles* |
|---|---|
| 4 | 32,000 |
| 5 | 32,000 |
| 6 | 32,000 |
| 7 | 32,000 |
| 8 | 32,610 |
| 9 | 33,580 |
| 10 | 34,550 |
| 11 | 35,510 |
| 12 | 36,470 |
| 13 | 37,420 |
| 14 | 38,360 |
| 15 | 39,300 |
| 16 | 40,320 |
| 17 | 41,160 |
| 18 | 42,080 |
| 19 | 42,990 |
| 20 | 43,900 |
| 21 | 44,800 |
| 22 | 45,700 |
| 23 | 46,590 |
| 24 | 47,470 |
| 25 | 48,350 |
| 26 | 49,220 |
| 27 | 50,090 |
| 28 | 50,950 |
| 29 | 51,800 |
| 30 | 52,650 |
| 31 | 53,490 |
| 32 | 54,330 |
| 33 | 55,160 |
| 34 | 55,980 |
| 35 | 55,980 |
| 36 | 55,980 |
| 37 | 55,980 |

The weights set forth in column 2 of the above table shall constitute the maximum permissive gross weight for any such vehicle, or combination of such vehicles.

C. The total gross weight concentrated on the highway surface from any tandem axle group shall not exceed thirty-two thousand (32,000) pounds for each such tandem axle group. A "tandem axle group" is defined to be two or more axles spaced 40 inches or more apart from center to center having at least one common point of weight suspension.

D. No freight motor vehicle, truck-tractor, trailer or semi-trailer, nor combinations of such vehicles, shall be operated over, on, or upon the public highways of this state where the total gross weight of such vehicle, or combination thereof including the load thereon, exceeds fifty-five thousand nine hundred eighty (55,980) pounds, except such vehicles, or combinations thereof, operate under special permits now authorized by law.

E. A freight motor vehicle, as used in this section, includes both the tractor or truck and the trailer, semi-trailer or trailers, if any, and the weight of any such combination shall not exceed the maximum fixed herein; provided, however, that no freight motor vehicle with motive power shall haul more than one vehicle.

* * * * *

2715.8. *Permit for excess weight or size; reduction; signs indicating.*—The commissioner of highways and public works shall have the authority to grant special permits for the movements of freight motor vehicles carrying gross weights in excess of the gross weights set forth in section 2715.3 [Williams Code § 2715.5] or dimensions in excess of the dimensions set forth in sections 2715.1 and 2715.2 [Williams Code §§ 2715.3 and 2715.4]. The commissioner of highways and public works shall have the authority to reduce the maximum gross weight of freight motor vehicles operating over lateral highways and secondary roads where through weakness of structure in either the surface of or the bridges over such lateral highways or secondary roads, the maximum loads provided by law, in the opinion of the commissioner, injure or damage such roads or bridges. The appropriate county officials shall have the same authority as to county roads.

The commissioner of highways and public works shall at each bridge and on each lateral highway or secondary road post signs indi-

rating the maximum gross weight permitted thereon; and it shall be unlawful to operate any freight motor vehicle thereon with a gross weight in excess of such posted weight limited and any person violating said rules and regulations of the commissioner of highways upon such secondary or lateral roads shall be punished as in case of the commission of a misdemeanor.

The commissioner of safety shall, with the approval of the governor, provide means and prescribe rules and regulations governing the weighing of freight motor vehicles as herein defined, which rules and regulations may make allowances for differentials in weight due to weather conditions.

The commissioner of highways and public works shall prescribe by orders of general application, rules and regulations for the issuance and or renewal (without cost to the applicant) of such special permits for stated periods not exceeding one year, for the transportation of such oversize, overweight, or overlength articles or commodities as cannot be reasonably dismantled or conveniently transported otherwise, and for the operation of such super-heavy or overweight motor trucks, semi-trailers and trailers, whose gross weight, including load, height, width, or length, may exceed the limits prescribed herein, or which in other respects fail to comply with the requirements of the code, as may be reasonably necessary for the transportation of such oversize, overweight, or overlength articles or commodities as cannot be reasonably dismantled or conveniently transported otherwise.

Said permit shall be issued and may be renewed only upon such terms and conditions, in the interest of public safety and the preservation of the highways, as are prescribed in said general rules and regulations promulgated by such orders of the commissioner.

Said rules and regulations so prescribed by the commissioner shall require, as a condition of the issuance of such permit, that the applicant shall agree to and give bond with surety (unless the applicant shall by sworn statement furnish satisfactory proof of his solvency to the authority issuing the permit) to indemnify the state and/or counties thereof, against damages to roads, or bridges, resulting from the use thereof by the applicant. Each such permit and bond, if the commissioner so authorizes, may cover more than one motor vehicle operated by the same applicant. The operation of motor trucks, tractors, semi-trailers or trailers, in accordance with the terms of any such permit shall not constitute a violation hereof, provided the operator thereof shall have said permit, or a copy thereof, authenticated as the commissioner may require, in his possession. The operation of any motor truck semi-trailer or trailer, in violation of the terms of such permit, shall constitute a violation of law punishable under section 2715.5 [Williams Code § 2715.9].

The authority issuing such permits shall have the right to revoke the same at any time in the event in the use of the same the holder of such permit shall abuse the privilege given thereby, or otherwise make wrongful use of the same. The authorized county authorities (as well as the commissioner) may issue permits, but always consistently with said rules and regulations, prescribed by the commissioner, for movements over any and all roads (except city streets) within the limits of the county, for which they are acting.

2715.9. *Violation of act misdemeanor; injunctions; disposition of fines, etc.*—Each violation of sections 2715.1, 2715.2, and 2715.3 of the Official Supplement [§§ 2715.2–2715.4 of Williams Code] and each violation of restrictions on the maximum gross weight of freight

motor vehicles duly adopted and promulgated by the commissioner of highways and public works, under section 2715.4 of the Official Supplement [§ 2715.8 of Williams Code], and each violation of rules and regulations duly adopted and promulgated by the commissioner of safety under said section, shall be a misdemeanor and, upon conviction thereof, a fine of not less than twenty-five (25) dollars nor more than five hundred ($500) dollars shall be assessed. Any taxpayers of the state shall have the right by injunction proceedings to enjoin any actual or threatened use of any highway prohibited by said sections. All fines, penalties and forfeitures of bonds imposed or collected under this section shall be paid over within 10 days after receipt thereof to the department of safety with a statement accompanying the same, setting forth the action or proceedings in which such monies were collected, the name and residence of the defendant, the nature of the offense, and fine, penalty, or forfeiture imposed.

West Virginia Code of 1949 (1953 Cum. Supp.):

§ 1721(455). [1] *Scope and Effect of Article.*—(a) It shall be unlawful for any person to drive or move or the owner, lessee or borrower to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size and weight exceeding the limitations stated in this article or otherwise in violation of this article, and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this article. Violation of this section shall constitute a misdemeanor.

* * * * *

§ 1721(462). [8] *Single-Axle Load Limit.*—(a) The gross weight imposed on the highway

by the wheels of any one axle of a vehicle shall not exceed eighteen thousand pounds.

(b) For the purpose of this article an axle load shall be defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle.

§ 1721(463). [9] *Gross Weight of Vehicles and Loads.*—(a) It shall be unlawful for any owner, lessee or borrower to operate any vehicle or combination of vehicles of a gross weight in excess of the gross weight for which such vehicle or combination of vehicles is registered or in excess of the limitations set forth in this chapter.

(b) Subject to the limit upon the weight imposed upon the highway through any one axle as set forth in section eight [§ 1721(462)] of this article the total gross weight with load imposed upon the highway by any one group of two or more consecutive axles of a vehicle or combination of vehicles shall not exceed the gross weight given for the respective distance between the first and last axle of the total group of axles measured longitudinally to the nearest foot as set forth in the following table:

| *Distance in feet between first and last axles of group* | *Maximum load in pounds on group of axles* |
|---|---|
| 4 | 32,000 |
| 5 | 32,000 |
| 6 | 32,000 |
| 7 | 32,000 |
| 8 | 32,610 |
| 9 | 33,580 |
| 10 | 34,550 |
| 11 | 35,510 |
| 12 | 36,470 |
| 13 | 37,420 |
| 14 | 38,360 |
| 15 | 39,300 |
| 16 | 40,230 |
| 17 | 41,160 |
| 18 | 42,080 |
| 19 | 42,990 |
| 20 | 43,900 |

| *Distance in feet between first and last axles of group* | *Maximum load in pounds on group of axles* |
|---|---|
| 21 | 44,800 |
| 22 | 45,700 |
| 23 | 46,590 |
| 24 | 47,470 |
| 25 | 48,350 |
| 26 | 49,220 |
| 27 | 50,090 |
| 28 | 50,950 |
| 29 | 51,800 |
| 30 | 52,650 |
| 31 | 53,490 |
| 32 | 54,330 |
| 33 | 55,160 |
| 34 | 55,980 |
| 35 | 56,800 |
| 36 | 57,610 |
| 37 | 58,420 |
| 38 | 59,220 |
| 39 | 60,010 |
| 40 | 60,800 |
| 41 | 61,580 |
| 42 | 62,360 |
| 43 | 63,130 |
| 44 | 63,890 |
| 45 | 64,650 |
| 46 | 65,400 |
| 47 | 66,150 |
| 48 | 66,890 |
| 49 | 67,620 |
| 50 | 68,350 |
| 51 | 69,070 |
| 52 | 69,790 |
| 53 | 70,500 |
| 54 | 71,200 |
| 55 | 71,900 |
| 56 | 72,590 |
| 57 | 73,280 |

Provided, that in no event shall the gross weight of any vehicle, including its load, exceed sixty thousand eight hundred pounds.

§ 1721 (46f). [10] *Officers May Weigh Vehicles and Require Removal or Rearrangement of Excess Loads.*—(a) Any police officer or employee of the state road commission designated by the state road commissioner as a member of an official weighing crew, having reason to believe that the weight of a vehicle and load is un-

lawful is authorized to require the driver to stop and submit to a weighing of the same by means of either portable or stationary scales and may require that such vehicle be driven to the nearest public scales in the event such scales are within two miles.

(b) Whenever an officer, or employee of the state road commission designated by the state road commissioner as a member of an official weighing crew, upon weighing a vehicle and load, as above provided, determines that the weight is unlawful, such officer may require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed or rearranged as may be necessary to reduce the gross weight or axle loads of such vehicle to such limit as permitted under this chapter. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

(c) Any driver of a vehicle who fails or refuses to stop and submit the vehicle and load to a weighing, or who fails or refuses when directed by an officer, or by an officer or employee of the state road commission, designated as a member of the weighing crew by the state road commissioner, upon a weighing of the vehicles, to stop the vehicle and otherwise comply with the provisions of this section, shall be guilty of a misdemeanor.

§ 1721 (465). [11] *Permits for Excess Size and Weight.*—(a) The state road commissioner may in his discretion upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, but in the event the application is for a permit for continuous operation of a vehicle not in conformity with the provisions of this article relating to weight

limitations the state road commissioner shall not issue such permit unless and until the applicant satisfies said commissioner that a bona fide effort has been made by said applicant to replace or alter such vehicle to conform with said provisions and any such permit for continuous operation of such vehicle shall expire one year after the effective date of this chapter unless a shorter period is specified by said commissioner: Provided, however, that specially designed vehicles which can only be used to transport and haul specific liquid or semi-liquid products shall be exempt from the provisions of this chapter, relating to weight limitations, during the life of such vehicles: Provided further, that this exemption shall only apply to vehicles registered in this state prior to the effective date of this chapter. In order for this exemption to apply the owner or operator shall apply for and the state road commissioner shall issue a permit for such vehicle allowing such owner or operator to use the same upon the roads and highways of this state for the life of such vehicle.

(b). The application for any such permit shall specifically describe the vehicle or vehicles and load to be operated or moved and the particular highways for which permit to operate is requested, and whether such permit is requested for a single trip or for continuous operation.

(c) The state road commissioner is authorized to issue or withhold such permit at his discretion; or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surface, or structures, and may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway structure.

(d) Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of the state road commissioner granting such permit, and no person shall violate any of the terms or conditions of such special permit.

§ 1721 (468). [14] *Penalties for Violation of Weight Laws; Impounding Vehicles.*—(a) Any owner, lessee or borrower who knowingly permits a vehicle or combination of vehicles owned by him to be operated with any axle load in excess of that permitted by section eight [§ 1721 (462)] of this article, plus a tolerance of five per cent, or with a total gross weight in excess of that permitted by section nine [§ 1721 (463)] of this article, plus a tolerance of five per cent, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in paragraphs (b) and (c) of this section.

(b) Any owner, lessee or borrower of a vehicle who shall be convicted of a first offense for a violation of this section shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars and in addition thereto shall pay either a fine of one cent per pound for any weight in excess of two thousand pounds over the legal weight for each axle or a fine of one cent per pound for any weight in excess of two thousand pounds over the permissible gross weight for such vehicle or combination of vehicles, whichever is the greater; and any owner, lessee or borrower of a vehicle who shall be convicted of a second offense for a violation of this section shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars and in addition thereto shall pay either a fine of two cents per pound for any weight in excess of two thousand pounds over the legal weight for each axle or a fine of two cents per pound for

any weight in excess of two thousand pounds over the permissible gross weight for such vehicle or combination of vehicles, whichever is the greater; and any owner, lessee or borrower who shall be convicted of a third or subsequent violation of this section shall be punished by a fine of not less than seventy-five dollars nor more than one hundred dollars and in addition thereto shall pay either a fine of three cents per pound for any weight in excess of two thousand pounds over the legal weight for each axle or a fine of three cents per pound for any weight in excess of two thousand pounds over the permissible gross weight for such vehicle or combination of vehicles, whichever is the greater, and in any case where the gross weight exceeds the statutory limit by five thousand pounds or more, the owner, lessee or borrower of such vehicle shall be fined five cents per pound for each pound of excess gross weight over the said statutory limit, which fine shall be in lieu of the additional fine per pound heretofore in this section provided.

(c) In the event any owner, lessee or borrower of a vehicle is charged with violating this section, the vehicle which is charged to be overloaded shall be impounded by the arresting officer and shall not be released to such owner, lessee or borrower unless and until such owner, lessee or borrower either shall have been found guilty and paid any fine assessed against such owner, lessee or borrower, or shall have furnished cash or surety bond in at least double the amount of the fine which may be assessed against such owner, lessee or borrower for such violation of this section and conditioned upon the payment of any such fine and costs assessed for such violation, or shall have been acquitted of such charge. Such owner, lessee or borrower shall be liable for any reasonable storage costs incurred in storing such vehicles.

IN THE

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1957**

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## No. 95

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HOOVER MOTOR EXPRESS CO., INC.,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,

*Respondent*

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## PETITION FOR RE-HEARING

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*Attorney for Hoover Motor Express Co., Inc.*

IN THE

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1957

## No. 95

HOOVER MOTOR EXPRESS CO., INC.,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,

*Respondent*

## PETITION FOR RE-HEARING

Pursuant to the provisions of Rule 33 Petitioner, Hoover Motor Express Co., Inc., most respectfully files this, its Petition for Re-Hearing, in the above cause.

Petitioner most respectfully insists that the opinion of this Court is clearly erroneous for the following reasons:

In the penultimate paragraph of the Court's opinion, the Court states:

> "The violations usually resulted from a shifting of the load during transit, but there is nothing in the record to indicate that the shifting could not have been controlled merely by tying down the load or compartmentalizing the trucks. Other violations occurred because petitioner relied on the weight stated in the bill of lading when picking up goods in small communities having no weighing facilities. It would seem that this situation could have been alleviated by carrying a scale in the truck."

The opinon of the District Court (R. 12) states:

> "In the view which the Court takes of the case, it is not necessary to determine whether the plaintiff did

all which should reasonably be required of it as a prudent operator to comply with the weight limitations involved. Assuming that it took every precaution that could fairly be demanded consistent with a practical operation of its business. . . .".

Since the District Court did not make any finding of fact regarding the precautions which Petitioner took because it based its decision upon the assumption that it did in fact take all reasonable precautions, the record in the District Court was not included in the record on appeal and this Court, therefore, did not have before it the transcript of the evidence. In spite of this, however, the Court in its opinion now says there is no evidence that Petitioner could not have prevented shifting of weight during transit by tying down the load or compartmentalizing the trailer. The proof in the District Court clearly establishes that it is impossible to tie down or otherwise prevent some shifting of weight within the trucks because the size, shape and condition of the packages of freight involved are never the same. The proof also shows that the shipments within the shipping crates themselves can and at times do shift sufficiently to cause axle violations in cases where the truck was required to make a sudden stop.

The Court also states that there is no reason why Petitioner could not equip its trucks with scales. Here again the Court is assuming a fact which is contrary to the proof in the case. The proof clearly shows that it is impossible to equip trucks with scales to weigh all freight as it is picked up for the simple reason that the scales would have to be such to accommodate shipments weighing only a few pounds, as well as shipments weighing several thousand pounds. To equip trucks with scales that would accurately weigh packages, under these circumstances would leave no

room on the truck for freight. This also is a matter which should be first determined by the tryer of the facts, namely, the District Court.

Certainly it is not the prerogative of this Court to make initial findings of fact in this case, but if it decides to do so, Petitioner most earnestly insists that it is entitled to have the Court consider the evidence in the case.

If the District Court, or even this Court, should find from the evidence in the case that Petitioner did not in fact take all reasonable precautions, then the conclusion contained in the last paragraph of the Court's opinion would be justified, because the Petitioner not having done all that could reasonably be done to comply with State laws would thereby be encouraged to commit future violations. If, however, as assumed by the District Court, the Petitioner took every precaution that could fairly be demanded, then the allowance of the expenses claimed could not frustrate the enforcement of the State Acts because it would not and could not have any effect on future violations.

Petitioner most respectfully insists that this Court must have based its findings that the allowance of the fines would frustrate the enforcement of State Acts upon the earlier finding that the record failed to show that Petitioner could not have prevented shifting of weight by tying the loads or compartmentalizing the trailers. Certainly, if the facts clearly establish that these things cannot be done, as suggested by the Court, then the conclusion reached by the Court with reference to frustration would necessarily be incorrect.

During the oral argument of the case the Solicitor General argued that the Petitioner could have done certain things to have prevented the shifting of freight. This matter was not included in the briefs because Petitioner understood, and still believes, that the cause should be disposed of on the facts assumed by the District Court. The Court

may recall that Petitioner's counsel was not permitted any rebuttal time to answer these oral arguments because counsel in the companion case, Tank Truck Rentals, Inc., inadvertently used all of Petitioner's time, although Petitioner's counsel had expressly reserved time for rebuttal.

In conclusion, this case is entirely different from the companion case, Tank Truck Rentals, Inc., because in that case admittedly the carrier made no effort to comply with the State Weight laws and certainly under these circumstances the allowance of the fines as a deductible expense would frustrate the enforcement of the State Acts, *because such allowance would encourage future violations.* This situation does not exist in this case.

Since the facts upon which the Court based its opinion are contrary to the facts in the case, Petitioner most respectfully insists that the opinion of the Court is erroneous and the case should be remanded to the District Court, with instructions for that Court, as the original tryer of the facts, to make specific findings as to whether Petitioner did in fact take every precaution that could fairly be demanded in its efforts to comply with the various State Weight laws. If this Court desires to make the finding initially, then Petitioner prays that this Court order the District Court to certify the transcript of the evidence in the case so that the Court may make its findings of fact upon the evidence.

Respectfully submitted,

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